

**ORIGINAL**

No. 9218

United States

**Circuit Court of Appeals**

For the Ninth Circuit.

*Vol*  
*2142*

NATIONAL LABOR RELATIONS BOARD,  
Petitioner,

vs.

LOS ANGELES BRICK & CLAY PRODUCTS  
CO., a corporation,

Respondent.

**Transcript of Record**

In Two Volumes

**VOLUME I**

Pages 1 to 284

Upon Petition for Enforcement of an Order  
of the National Labor Relations Board.

**FILED**

SEP 1 1933

PAUL P. O'BRIEN,



NO. 9218

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United States  
Circuit Court of Appeals  
For the Ninth Circuit.

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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United States of America

Before the National Labor Relations Board

.....Region

Case No. XXI, C287

In the Matter of

L. A. BRICK & CLAY PRODUCTS CO.

and

ALBERHILL CLAY WORKERS UNION  
MINE MILL & SMELTER WORKERS.

Date filed June 15, 1937.

167 involved strike.

### CHARGE.

Pursuant to Section 10(b) of the National Labor Relations Act, the undersigned hereby charges that the L. A. Brick & Clay Products Co., Alberhill, Calif., has engaged in and is engaging in unfair labor practices within the meaning of Section 8, subsections (1) and (3) and (5) of said Act, in that on or about June 2, 1937, the said employer did lay off approximately 47 members of the complaining union solely for their union activities, and on or about June 10, 1937, did refuse to recognize and to bargain with the Alberhill Clay Workers Union.

The undersigned further charges that said unfair labor practices are unfair labor practices affecting commerce within the meaning of said Act.

Name and address of person or labor organization making the charge. (If made by a labor organization, give also the name and official position of the person acting for the organization.)

ALBERHILL CLAY WORKERS UNION

By LAWRENCE C. McNUTT

LAWRENCE C. McNUTT, Sec.

Twin Springs, Corona, Calif.

Subscribed and sworn to before me this 15th day of June, 1937.

TOWNE NYLANDER

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[Title of Board and Cause.]

AMENDED CHARGE.

Pursuant to Section 10(b) of the National Labor Relations Act, the undersigned hereby charges that Los Angeles Brick & Clay Products Co. has engaged in and is engaging in unfair labor practices within the meaning of Section 8, subsections (1) and (3) and (5) of said Act, in that the company discharged and refused to reinstate:

L. C. McNutt, Thomas A. Roddy, Arnold Moss, Gerald D. Wenker, Lester Hazelton on the third day of June, 1937, because of their union activity;

Edward Hannum on June 7, 1937, because of his union activity;

William G. Ashworth on June 8, 1937, because of his union activity;

James Grier on June 9, 1937, because of his union activity; and

Lawrence German, C. W. Starr, Lorrin E. Thorpe, Albert (Slim) Davis, Charles Willard, and Claude Pearl on or about June 3 to June 10, 1937, because of their union activity.

The company on or about June 25, 1937, refused to reinstate the individuals named above and the following:

C. W. Lucas, Sylvester Osborn, Frank German, Raymond Macht, Kenneth Norris, Gregorio Cordero, C. Glenn Stewart, Art Hannum, M. J. Eaglin, Charles Bland, Sam Dabich, Nils Martinson, Juan Romero, Ernest Sill, M. G. Eaglin, and Mark Damron because of their union activity.

The company at some date after July 1, 1937, reinstated Sam Dabich, and Nils Martinson but at reduced pay and on different jobs than they had previously had because of their union activity.

On or about June 10, 1937, the union requested the company to bargain collectively with it as representative of all employees in the Alberhill plant except foremen, supervisors, and office employees, a majority of whom had previously designated the union as their representative. The company on that date and at all times since refused to bargain collectively with the union.

The undersigned further charges that said unfair labor practices are unfair labor practices affecting commerce within the meaning of said Act.



Name and address of person or labor organization making the charge. (If made by a labor organization, give also the name and official position of the person acting for the organization.)

ALBERHILL CLAY PRODUCTS WORKERS  
UNION No. 373

By LAWRENCE C. McNUTT,  
Secretary and Treasurer.  
Twin Springs, Corona, Calif.

Subscribed and sworn to before me this 5th day  
of December, 1937. David Persinger, Atty.,  
N. L. R. B.

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[Title of Board and Cause.]

### COMPLAINT.

It having been charged by Alberhill Clay Products Workers' Union No. 373, Alberhill, California, that the Los Angeles Brick & Clay Products Co., 1078 Mission Road, Los Angeles, hereinafter referred to as respondent, at its plant at Alberhill, California, has engaged in and is now engaging in certain unfair labor practices affecting commerce as set forth and defined in the National Labor Relations Act, 49 Stat. 449, the National Labor Relations Board, by its Regional Director for the Twenty-first Region, as agent for the National Labor Relations Board, designated by National Labor Relations Board Rules and Regulations—Series 1, as amended, hereby alleges the following:

1. The respondent is and has been since January 10, 1900, a corporation organized under and existing by virtue of the laws of the State of California, having its principal office and place of business at 1078 Mission Road in the City of Los Angeles, County of Los Angeles, State of California. Respondent is now and at all times herein mentioned has been engaged at a plant in the town of Alberhill, County of Riverside, State of California, hereinafter called the plant, in the manufacture, sale, and distribution of face, fire, common, and paving brick; hollow, floor, drain and roofing tile; sewer pipe; and flue lining.

2. Respondent, in the course and conduct of its business, as aforesaid, causes and has continuously caused large quantities of the brick, tile, sewer pipe, and flue lining manufactured by it to be sold and transported in interstate commerce from its plant in the State of California to, into, and through states of the United States other than the State of California, territories of the United States, and foreign countries.

3. Alberhill Clay Products Workers' Union No. 373, hereinafter called the union, is a labor organization within the meaning of Section 2, subdivision 5 of the Act.

4. Respondent, by its officers and agents, while engaged at its plant as described in paragraphs one and two, hereof, did on or about the second day of

June, 1937, and on many and various succeeding dates to and including the tenth day of June, 1937, discharge those individuals, and each of them, whose names appear in Appendix A, hereinafter referred to as the individuals named in Appendix A, attached hereto and herewith incorporated into and made a part of this complaint, employed by respondent at its plant, and did refuse and at all times since said dates has refused and now does refuse to reinstate the said individuals named in Appendix A, and each of them.

5. Respondent discharged and refused and has refused and now does refuse to reinstate the said individuals named in Appendix A, and each of them, for the reason the said individuals named in Appendix A, and each of them, joined and assisted the union and engaged in concerted activities with other employees for the purpose of collective bargaining and other mutual aid and protection.

6. By its discharge of and refusal to reinstate the individuals named in Appendix A, and each of them, as set forth in paragraphs four and five, supra, respondent did interfere with, restrain, and coerce and is interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act, and by all said acts, and each of them, did thereby engage in and is thereby engaging in unfair labor practices within the meaning of Section 8, subdivision 1 of the Act.



7. By its discharge of and refusal to reinstate the individuals named in Appendix A, and each of them, as set forth in paragraphs four and five, hereof, respondent did discriminate and is discriminating in regard to hire and tenure of employment of the said individuals named in Appendix A, and each of them, and did thus discourage and is thus discouraging membership in the union, and by all said acts, and each of them, did thereby engage in and is thereby engaging in unfair labor practices within the meaning of Section 8, subdivision 3 of the Act.

8. Respondent, by its officers and agents, while engaged at its plant as described in paragraphs one and two hereof, did, on or about June 25, 1937, refuse, and at all times since that date has refused, and now does refuse to reinstate the individuals whose names appear in Appendix B, and each of them, hereinafter referred to as the individuals named in Appendix B, attached hereto and herewith incorporated into and made a part of this complaint, employed by respondent at its plant.

9. Respondent refused and has refused and now does refuse to reinstate said individuals named in Appendix B, and each of them, for the reason that said individuals named in Appendix B, and each of them, joined and assisted the union and engaged in concerted activities with other employees for the purpose of collective bargaining and other mutual aid and protection.

10. By its refusal to reinstate the individuals named in Appendix B, and each of them, as set forth in paragraphs eight and nine hereof, respondent did interfere with, restrain, and coerce, and is interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act, and by all said acts, and each of them, did thereby engage in, and is thereby engaging in, unfair labor practices within the meaning of Section 8, subdivision 1 of the Act.

11. By its refusal to reinstate the individuals named in Appendix B, and each of them, as set forth in paragraphs eight and nine hereof, respondent did discriminate and is discriminating in regard to hire and tenure of employment of the said individuals named in Appendix B, and each of them, and did thus discourage, and is thus discouraging membership in the union and by all said acts, and each of them, did thereby engage in, and is thereby engaging in unfair labor practices within the meaning of Section 8, subdivision 3 of the Act.

12. Respondent, by its officers and agents, while engaged in the operations described in paragraphs one and two, hereof, did, on or about June 25, 1937, reinstate Sam Dabich and Nils Martinsen, and each of them, but did deprive the said Sam Dabich and Nils Martinsen, and each of them, of all rights and privileges previously enjoyed by them, and did reduce the rate of pay and wages of the said Sam Dabich and Nils Martinsen, and each of them, and

did assign the said Sam Dabich and Nils Martinsen, and each of them, to jobs other than the jobs which they had held prior to the 2nd day of June, 1937.

13. Respondent deprived the said Sam Dabich and Nils Martinsen, and each of them, of all rights and privileges previously enjoyed by them and reduced the rates of pay and wages of the said Sam Dabich and Nils Martinsen, and each of them, and did assign the said Sam Dabich and Nils Martinsen, and each of them, to jobs other than the jobs they had held prior to the 2nd day of June, 1937, for the reason that the said Sam Dabich and Nils Martinsen, and each of them, joined and assisted the union and engaged in concerted activities with other employees for the purpose of collective bargaining and other mutual aid and protection.

14. By its deprivation of the rights and privileges previously enjoyed by the said Sam Dabich and Nils Martinsen, and each of them, and by its reduction of the rates of pay and wages of the said Sam Dabich and Nils Martinsen, and each of them, and by its assignment of the said Sam Dabich and Nils Martinsen, and each of them, to jobs other than the jobs they had held prior to the 2nd day of June, 1937, all as set forth in paragraphs twelve and thirteen, hereof, respondent did interfere with, restrain, and coerce, and is interfering with, restraining, and coercing, its employees in the exercise of the rights guaranteed in Section 7 of the Act, and by all said



acts, and each of them, did thereby engage in, and is thereby engaging in, unfair labor practices within the meaning of Section 8, subdivision 1 of the Act.

15. By its deprivation of the rights and privileges previously enjoyed by the said Sam Dabich and Nils Martinsen, and each of them, and by its reduction of the rates of pay and wages of the said Sam Dabich and Nils Martinsen, and each of them, and by its assignment of the said Sam Dabich and Nils Martinsen, and each of them, to jobs other than the jobs they had held prior to the 2nd day of June, 1937, all as set forth in paragraphs twelve and thirteen, hereof, respondent did discriminate, and has discriminated, and is discriminating, in regard to hire and tenure of employment and other terms and conditions of employment of the said Sam Dabich and Nils Martinsen, and each of them, and did thus discourage and is thus discouraging membership in the union and, by all said acts, and each of them, did thereby engage in, and is thereby engaging in unfair labor practices within the meaning of Section 8, subdivision 3 of the Act.

16. The employees of respondent engaged in the pits and in the production department of the plant, exclusive of supervisors, foremen, and office employees, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9, subdivision (b) of the Act.

17. On or about June 2, 1937, and June 5, 1937, a majority of the employees in the aforesaid unit designated the union as their representative for the purposes of collective bargaining with respondent, with respect to rates of pay, wages, hours of employment and other conditions of employment, said designation having been made by applications for membership in the union. At all times since said June 5, 1937, the union has been the representative for the purposes of collective bargaining of a majority of the employees in the unit, aforesaid, and has, by virtue of Section 9, subdivision (a) of the Act, been the exclusive representative of all employees in the aforesaid unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, and other conditions of employment.

18. On or about June 10, 1937, while respondent was engaged at its plant as described in paragraphs one and two, hereof, the union in writing requested respondent to bargain collectively with it as representative of the employees in the aforesaid unit with respect to rates of pay, wages, hours of employment, and other conditions of employment.

19. Respondent, by its officers and agents, while engaged at its plant as described in paragraphs one and two, hereof, did on or about June 10, 1937, and at all times thereafter, refuse and has refused and now does refuse to bargain collectively with the

union with respect to rates of pay, wages, hours of employment, or other conditions of employment of the employees in the aforesaid unit.

20. By its refusal to bargain collectively with the union, as set forth in paragraph eleven, hereof, respondent did interfere with, restrain, and coerce, and is interfering with, restraining and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act, and by all said acts, and each of them, did thereby engage in and is thereby engaging in unfair labor practices, within the meaning of Section 8, subdivision 1 of the Act.

21. By its refusal to bargain collectively with the union, as set forth in paragraph eleven, hereof, respondent did engage in, and is engaging in unfair labor practices within the meaning of Section 8, subdivision 5 of the Act.

22. The activities of respondent as set forth in paragraphs four to twenty-one, both inclusive, hereof, occurring in connection with the operations of respondent, as described in paragraphs one and two, hereof, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several states, territories of the United States, and with foreign countries and have led and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

23. The aforesaid acts of respondent, as set forth in paragraphs four to twenty-one, both inclu-



sive, hereof, occurring in connection with the operations of respondent, described in paragraphs one and two, hereof, constitute unfair labor practices affecting commerce within the meaning of Section 8, subdivisions 1, 3, and 5 and Section 2, subdivisions 6 and 7 of the Act.

Wherefore, the National Labor Relations Board on this 9th day of December, 1937, issues its complaint against the Los Angeles Brick & Clay Products Co., respondent herein.

#### NOTICE OF HEARING.

Please take notice that on the 16th day of December, 1937, in Room 745 Pacific Electric Building, Sixth and Main Sts., Los Angeles, Calif., at 9:30 o'clock in the forenoon, a hearing will be conducted before the National Labor Relations Board, by a Trial Examiner to be designated by it in accordance with its Rules and Regulations—Series 1, as amended, Article IV and Article II, Section 23, on the allegations set forth in the complaint hereinabove set forth, at which time and place you will have the right to appear in person or otherwise, and give testimony.

You are further notified that you have the right to file with the Regional Director for the Twenty-first (21st) Region, acting in this matter as the agent of the National Labor Relations Board, an answer to the foregoing complaint, on or before the 15th day of December, 1937.

Enclosed herewith for your information is a copy of the Rules and Regulations, made and published by the National Labor Relations Board, pursuant to authority granted in the National Labor Relations Act. Your attention is particularly directed to Article II of said Rules and Regulations.

In witness whereof, the National Labor Relations Board has caused this, its complaint and its notice of hearing, to be signed by the Regional Director for the Twenty-first (21st) Region on the 9th day of December, 1937.

[Seal]

TOWNE NYLANDER

Regional Director, 21st Region  
National Labor Relations  
Board

745 Pacific Electric Bldg.  
Los Angeles, California

#### APPENDIX A.

Wm. G. Ashworth, Thomas A. Roddy, Arnold Moss, James Grier, Gerald D. Wenker, Lester Hazelton, Lawrence German, L. C. McNutt, Edward Hannum, C. W. Starr, Albert (Slim) Davis, Chas. Willard, Claude Pearl.

#### APPENDIX B.

C. W. Lucas, Sylvester Osborn, Frank German, Raymond Macht, Kenneth Norris, C. Glenn Stewart, Art Hannum, M. J. Eaglin, Chas. Bland, Sam Dabich, Nils Martinson, Juan Romero, Ernest Sill, M. G. Eaglin, Mark Damron, Gregorio Cordero.



[Title of Board and Cause.]

ANSWER.

Comes now the respondent in the above entitled proceeding, and in answer to the formal complaint of the Regional Director, Twenty-first Region, National Labor Relations Board, admits, denies and alleges as follows:

I.

Answering paragraph II of said complaint, respondent denies that respondent in the course of conduct of its business caused, or has continuously or at any time caused large quantities of the brick, tile, sewer pipe or flue lining, or any other products manufactured by it to be sold or transported in interstate commerce from its plant in the State of California, to or into or through the states of the United States or any of them other than the State of California, or territories of the United States or foreign countries. In this connection respondent alleges that during the two years preceding the filing of this complaint, not to exceed ten per cent (10%) of the products manufactured by it have been sold and transported in interstate commerce from its plants in the State of California to, into or through the states of the United States other than the State of California, or territories of the United States or foreign countries, and that all of the materials used by respondent in the manufacture of its products in the State of California

are purchased or obtained by respondent within the State of California.

## II.

Answering paragraph III of said complaint respondent is without knowledge concerning the allegations therein contained, and basing its denial upon that ground denies each and every such allegation.

## III.

Answering paragraph IV of said complaint, respondent denies that respondent by its officers or agents, or otherwise or at all, either while engaged at respondent's plant as alleged in said paragraphs I and II or otherwise, did on or about the 2nd day of June, 1937, or at any other time, discharge those individuals, or any of them, listed in Appendix A attached to said complaint, or any other employees employed by respondent at its plant, and denies that respondent did refuse at any time or does now refuse, without just, reasonable and legal cause therefor, to reinstate any individuals or employees heretofore employed by respondent, whether listed in said Appendix A or otherwise.

## IV.

Answering paragraph V of said complaint, respondent denies that respondent discharged or refused or has refused or now does refuse to reinstate the said individuals named in said Appendix A, or any of them, for the reason that said indi-

viduals, or any of them, joined or assisted the union or engaged in concerted activities with other employees for the purpose of collective bargaining or other mutual aid and protection, or by reason of any union activities or affiliation of said individuals or any of them. Respondent alleges that at no time prior to June 10, 1937, did it have any knowledge as to whether said individuals, or any of them, named in Appendix A, had been or were members of said union or any labor organization, and that at no time since said June 10, 1937, has respondent had any knowledge as to whether said individuals, or any of them, named in said Appendix A, other than Edward E. Hannum and Laurence C. McNutt, were or are members of said union or any labor organization.

#### V.

Answering paragraph VI of said complaint, respondent denies that by its alleged discharge of and/or by its alleged refusal to reinstate the individuals named in Appendix A, or any of them, as set forth in paragraphs IV and V of said complaint, or otherwise, respondent did interfere with or restrain or coerce, or is interfering with or restraining or coercing its employees, or any of them, in the exercise of the rights, or any of them, guaranteed or otherwise provided for in Section 7 of the Act, or by any other provision of the Act, or by all or any of said acts, did thereby engage in or is thereby engaging in unfair labor practices or any unfair



labor practice within the meaning of Section 8, Subdivision 1 of the Act, or any other Sections or provisions of the Act.

## VI.

Answering paragraph VII of said complaint respondent denies that by its alleged discharge of or by its alleged refusal to reinstate the individuals named in said Appendix A, or any of them, as set forth in paragraphs IV and V of said complaint, or otherwise, respondent did discriminate or is discriminating in regard to hire or tenure of employment of the said individuals named in Appendix A, or any of them, or did thereby or otherwise discourage or is thereby or otherwise discouraging membership in the union or in any labor organization, or by all of said alleged acts, or any of them, did thereby or did otherwise engage in or is thereby or otherwise engaging in unfair labor practices or any unfair labor practice, within the meaning of Section 8, Subdivision 3 of the Act, or any other subdivisions, sections or provisions of said Act, or otherwise.

## VII.

Answering paragraph VIII of said complaint, respondent denies that respondent either by its officers or agents, or otherwise, or at all, either while engaged at its plant as alleged in paragraphs I and II of said complaint, or otherwise, or at all, did on or about June 25, 1937, or at any other time, refuse,

and denies that at all times or at any time since that date has respondent refused or that respondent does now refuse to reinstate without just, reasonable and legal cause therefor, any individuals or employees heretofore employed by respondent whether named in said Appendix B or otherwise.

### VIII.

Answering paragraph IX of said complaint respondent denies that respondent refused or has refused or now does refuse, to reinstate said individuals named in Appendix B, or any of them, for the reason that said individuals named in said Appendix B, or any of them, joined or assisted the said union, or any labor organization, or engaged in concerted or any activities with other employees for the purpose of collective bargaining or other mutual aid and protection, or by reason of any union activities or affiliation of said individuals, or any of them. Respondent alleges that at no time did it have, nor has it now any knowledge as to whether said individuals, or any of them named in Appendix B, had been, or were, or now are members of said union, or any labor organization.

### IX.

Answering paragraph X of said complaint respondent denies that by its alleged refusal to reinstate the individuals named in Appendix B, or any of them, as set forth in paragraphs VIII and IX of

said complaint, or otherwise, respondent did interfere with or restrain or coerce, or is interfering with or is restraining or is coercing its employees, or any of them, in the exercise of the rights or any rights guaranteed or otherwise provided for in Section 7 of the said Act, or by any other sections, subdivisions or provisions of said Act, or by all of said alleged acts, or any of them, did thereby or otherwise engage in, or is thereby or otherwise engaging in unfair labor practices within the meaning of Section 8, Subdivision 1 of the said Act, or any other sections, subdivisions or provisions of the said Act.

#### X.

Answering paragraph XI of said complaint respondent denies that by its alleged refusal to reinstate the individuals named in Appendix B, or any of them, as set forth in paragraphs VIII and IX of said complaint, or otherwise, respondent did discriminate or is discriminating in regard to hire or tenure of employment of the said individuals named in Appendix B, or any of them, or did thereby, or otherwise, discourage, or is thereby, or otherwise, discouraging membership in the said union, or by all of said alleged acts, or any of them, did thereby, or otherwise, engage in, or is thereby or otherwise engaging in unfair labor practices within the meaning of Section 8, Subdivision 3 of the Act, or of any other sections, subdivisions or provisions of the said Act.



## XI.

Answering paragraph XII of said complaint, respondent denies that respondent by its officers or agents or otherwise, either while engaged in the operations described in paragraphs I and II of said complaint or otherwise, did on or about June 25, 1937, or at any time, reinstate Sam Dabich or Nils Martinsen, and denies that respondent did deprive or has deprived the said Sam Dabich or Nils Martinsen of all or any rights or privileges previously enjoyed by them, or either of them, or did reduce the rate of pay or wages of said Sam Dabich or Nils Martinsen or did assign said Sam Dabich or Nils Martinsen to jobs other than the jobs which they or either of them had held prior to the 2nd day of June, 1937. Respondent alleges that said Sam Dabich and Nils Martinsen and each of them did on or about June 11, 1937, voluntarily and of their own accord and volition and without any act of respondent, cease and terminate their employment; that thereafter, on a date subsequent to said June 11, 1937, said Sam Dabich and Nils Martinsen, and each of them, did request of respondent that they and each of them be re-employed by respondent and be given any position then available at respondent's plant and for which they were qualified by reason of their experience and ability; that thereupon respondent did re-employ said Sam Dabich and Nils Martinsen, and each of them, in and at jobs which were then available and for which said Sam Dabich

and Nils Martinsen were qualified by reason of their experience and ability and at the then prevailing rate of pay for said jobs.

## XII.

Answering paragraph XIII of said complaint, respondent denies that respondent deprived the said Sam Dabich and Nils Martinsen, or either of them, of all or any rights or privileges previously enjoyed by them, or either of them, or reduced the rates of pay or wages of the said Dabich and Martinsen, or either of them, or did assign the said Dabich and Martinsen, or either of them, to jobs other than the job or jobs they or either of them had held prior to the 2nd day of June, 1937, for the reason that the said Dabich and Martinsen, or either of them, joined or assisted the union or any labor organization or engaged in concerted or any activities with other employees for the purpose of collective bargaining or other mutual aid or protection, or by reason of any union activities or affiliation of said Dabich and Martinsen, or either of them.

## XIII.

Answering paragraph XIV of said complaint, respondent denies that by its alleged deprivation of the or any rights or privileges previously enjoyed by the said Dabich and Martinsen, or either of them, or by its alleged reduction of the rates of pay or wages of the said Dabich or Martinsen, or either of them, or by its alleged assignment of the said



Dabich and Martinsen, or either of them, to jobs other than the jobs they or either of them had held prior to the 2nd day of June, 1937, as set forth in paragraphs XII and XIII of said complaint or otherwise, respondent did interfere with or restrain or coerce or is interfering with or is restraining or is coercing its employees or any of them in the exercise of the or any rights guaranteed in Section 7 of the said Act or in any of the subdivisions, sections or provisions of said Act, or otherwise, or by all or any of said alleged acts or any of them did thereby or otherwise engage in or is thereby or otherwise engaging in unfair labor practices or any unfair labor practice within the meaning of Section 8, subdivision 1, of the said Act or of any subdivisions, sections or provisions of the said Act.

#### XIV.

Answering paragraph XV of said complaint, respondent denies that by its alleged deprivation of the or any rights or privileges previously enjoyed by the said Sam Dabich and Nils Martinsen or either of them, or by its alleged reduction of the rates of pay or wages of the said Dabich and Martinsen, or either of them, or by its alleged assignment of the said Dabich and Martinsen, or either of them, to jobs other than the job or jobs they or either of them had held prior to the 2nd day of June, 1937, as set forth in paragraphs XII and XIII of said complaint, or otherwise, respondent

did discriminate or has discriminated or is discriminating in regard to hire or tenure of employment or other terms or conditions of employment of the said Dabich and Martinsen, or either of them, or did thereby or otherwise discourage or is thereby or otherwise discouraging membership in the union or by all of said alleged acts or any of them did thereby or otherwise engage in or is thereby or otherwise engaging in unfair labor practices or any unfair labor practice within the meaning of Section 8, Subdivision 3 of the said Act, or of any subdivisions, sections, or provisions of the said Act.

#### XV.

Answering paragraph XVI of said complaint, respondent denies that the employees of respondent engaged in the pits and in the production department of respondent's said plant, whether exclusive of supervisors, foremen and office employees, or otherwise, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9, subdivision b, of said Act, or of any subdivisions, sections or provisions of the said Act.

#### XVI.

Answering paragraph XVII of said complaint, respondent alleges that it has no knowledge, with respect to the matters therein alleged, or any of them, and basing its denial upon that ground denies generally and specifically each and every allegation therein contained.

## XVII.

Answering paragraph XVIII of said complaint, respondent alleges that at no time prior to June 10, 1937, or thereafter, did the said union represent nor has it represented to respondent that the said union was or is representative of a majority of the employees employed by respondent at its said plant or of any unit thereof, whether the unit referred to in paragraphs XVI and XVII of said complaint or any other unit, and respondent alleges that it has had no knowledge nor does it now have any knowledge as to whether said union represents a majority of the employees of respondent or of any appropriate unit thereof, whether it be the unit hereinabove referred to or otherwise, for the purpose of collective bargaining within the meaning of said Act or otherwise. That the only notice or knowledge acquired by respondent with respect to said union or with respect to whether said union represented or purported to represent any of the employees of respondent was received by respondent at the time of delivery to its superintendent at said plant on June 10, 1937 of a typewritten paper, a copy of which is attached hereto, marked Exhibit "A", and by this reference made a part hereof as fully as though set forth in words and figures herein.

Except as hereinbefore alleged or admitted, respondent denies that on or about June 10, 1937 while respondent was engaged at its plant as described in paragraphs I or II hereof, or otherwise, the said union in writing, or otherwise, requested



respondent to bargain collectively with it as representative of the employees in the said unit with respect to rates of pay or wages or hours of employment, or other conditions of employment.

### XVIII.

Answering paragraph XIX of said complaint, respondent denies that respondent, by its officers or agents or otherwise, either while engaged at its plant as described in paragraphs I and II of said complaint or otherwise, did on or about June 10, 1937, or at all or any times thereafter, refuse or has refused or now does refuse to bargain collectively within the meaning of or as required by the provisions of the said Act, with the said union with respect to rates of pay, wages, hours of employment or other conditions of employment of the employees in said unit or any appropriate unit of employees of respondent. Respondent alleges, however, that said union at no time has represented nor does it now represent a majority of the employees in said or any unit for the purposes of collective bargaining in respect to rates of pay or wages or hours of employment or other conditions of employment, and respondent further alleges that at no time has respondent been requested by said union or by any union representing a majority of the employees of said or any unit, to bargain collectively with said union or any union with respect to rates of pay or wages or hours of employment or other conditions of employment.

**XIX.**

Answering paragraph XX of said complaint, respondent denies that by its alleged refusal to bargain collectively with the said union as set forth in paragraph XI of said complaint, or otherwise, respondent did interfere with or restrain or coerce or is interfering with or restraining or coercing its employees, or any of them, in the exercise of the or any rights guaranteed in Section 7 of the said Act, or in any sections, subdivisions or provisions of the said Act, or by all or any of said alleged acts did thereby or otherwise engage in or is thereby or otherwise engaging in unfair labor practices or any unfair labor practice within the meaning of Section 8, subdivision 1, of the said Act, or of any subdivisions, sections or provisions of the said Act.

**XX.**

Answering paragraph XXI of said complaint, respondent denies that by its alleged refusal to bargain collectively with the said union, as set forth in paragraph XI of said complaint, respondent did engage in or is engaging in unfair labor practices within the meaning of Section 8, subdivision 5, of the said Act, or of any subdivisions, sections or provisions of the said Act.

**XXI.**

Answering paragraph XXII of said complaint, respondent denies that the alleged activities, or any of them, of respondent as set forth in paragraphs IV to XXI, both inclusive, of said complaint, or in

any of said paragraphs, either occurring in connection with the operations of respondent as described in paragraphs I or II of said complaint or otherwise, have or any of them has a close or intimate or substantial relation to trade or traffic or commerce among the several states or any of them, or among the territories of the United States or any of them, or with foreign countries or any of them, or have led or tend to lead to labor disputes burdening or obstructing commerce or the free flow of commerce or otherwise.

## XXII.

Answering paragraph XXIII of said complaint, respondent denies that the alleged acts of respondent, as set forth in paragraphs IV to XXI, both inclusive, of said complaint, or in any of said paragraphs or otherwise, either occurring in connection with the operations of respondent as described in paragraphs I or II of said complaint or otherwise, constitute or have constituted unfair labor practices or an unfair labor practice affecting commerce within the meaning of Section 8, subdivisions 1, 3 and 5, and Section 2, subdivisions 6 and 7, of the said Act, or within the meaning of any subdivisions, sections or provisions of said Act.

Wherefore, respondent prays that the complaint herein and all proceedings thereunder be dismissed, and for such other and further relief as may be meet, equitable and proper.

ELLIS, HOWLETT & MacLAREN

By ELMER H. HOWLETT

Attorneys for Respondent



EXHIBIT "A"

1. The Los Angeles Brick and Clay Products Company recognize and accept as the collective bargaining agent of its employees the recently formed Union known as the Alberhill Clay Workers Union, affiliated with the International Mine Mill and Smelter workers.

2. That all employees whose services were terminated since the first day of June? Nineteen hundred, Thirty-seven reasons of the reported depression in business and shortage of orders on hand to be filled, be reemployed and put to work at the Alberhill plant of the Los Angeles Brick and Clay Products Company *befoe* seven *thrity* A. M. Friday, the eleventh day of June, nineteen and *theity* seven, and in the existance of said depression of business and lack of orders on hand that the men shall be given equal number of hours of work each month until said depression is over; thus relieving any man or group of men from standing the full brunt of said depression and that all overtime consisting of time over 8 hours in any one day and 40 hours in any week be paid at the rate of one and one-half time. This article to be in effect until July 15, 1937.

The representatives and (or) the president of the Alberhill Clay Workers Union be notified of the decision of acceptance or refusal reached by the Los Angeles Brick and Clay Products Company by twelve o'clock mid-night of Thursday the

tenth day of June Nineteen hundred and Thirty-seven and in the existence of no notification by the specified hour the Union shall act upon the supposition that their requests have been denied and will not be complied with

EDWARD E. HANNUM

President

LAURENCE C. McNUTT

Sec & Treas.

State of California,  
County of Los Angeles.—ss.

Henry Prussing, being first duly sworn, deposes and says: That he is the secretary-treasurer of Los Angeles Brick and Clay Products Company, a corporation, respondent in the above entitled proceedings, and that he makes this verification for and on behalf of said respondent corporation; that he has read the foregoing answer and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters that are therein stated upon his information or belief, and as to those matters he believes it to be true.

HENRY PRUSSING

Subscribed and sworn to before me this 15 day of December, 1937.

[Seal]

MANYA NIDEVER

Notary Public in and for the  
said County and State

[Title of Board and Cause.]

NOTICE OF SPECIAL APPEARANCE OF LOS  
ANGELES BRICK & CLAY PRODUCTS  
COMPANY, A CORPORATION, AND MO-  
TION TO DISMISS COMPLAINT

To: The National Labor Relations Board of the  
United States of America, Twenty-first Region,  
and Towne Nylander, Regional Director thereof,  
and Alberhill Clay Products Workers' Union No.  
373:

You and each of you will kindly take notice that the respondent, Los Angeles Brick & Clay Products Company, a corporation, hereby appears in the above entitled proceeding, specially only and not generally, but only for the purpose of contesting and questioning the jurisdiction of the National Labor Relations Board of the United States of America to entertain or hear or otherwise proceed in connection with the complaint on file herein.

You will please take further notice that on the 16th day of December, 1937, at 9:30 A. M. on that day, or as soon thereafter as counsel can be heard, in the Board of Supervisors meeting room, Riverside County Courthouse, Riverside, California, said respondent, Los Angeles Brick & Clay Products Company, a corporation, will move the above entitled Board for an order dismissing said complaint and all proceedings thereon upon the grounds that said respondent has not during any time mentioned in said complaint, or within two years last past

been, nor is it now engaged in any operations, the interruption of which would have the effect of burdening or obstructing the free flow of commerce among the several states, territories of the United States, or with foreign countries, and upon the further ground that the alleged activities of respondent as set forth in the complaint herein have not a close, intimate or substantial relation to, or effect upon, trade, traffic or commerce among the several states, territories of the United States, or with foreign countries, or have led or tended to lead to labor disputes, burdening or obstructing commerce or the free flow of commerce, within the meaning of the National Labor Relations Act and within the meaning of Article I, Section 8 and the 10th amendment to the Constitution of the United States.

Said motion will be based upon the affidavit of Henry Prussing hereto attached, upon all the files, records and minutes of this proceeding, and upon other evidence, both oral and documentary, to be adduced at the hearing of said motion.

ELLIS, HOWLETT & MacLAREN

By ELMER H. HOWLETT

Attorneys for Respondent.

Memorandum of Points and Authorities  
National Labor Relations Board vs. Jones & Laughlin Steel Corporation (United States Supreme Court, No. 419, Mar. 12, 1937) 57 S. Ct. 615;  
Schechter Corporation vs. United States. 295 U.S. 495.



[Title of Board and Cause.]

AFFIDAVIT

State of California,  
County of Los Angeles—ss.

Henry Prussing being first duly sworn deposes and says: That he is now and for many years last past has been an officer, to-wit, Secretary of the Los Angeles Brick & Clay Products Company, a corporation, respondent in the above entitled proceedings; that as such officer he is now and for many years last past has been familiar with the business and affairs of respondent, and has had and does now have the custody of the books and records of respondent, and is familiar with the contents thereof.

That affiant has examined the records of the corporation and from such examination states that during the year 1936, and during the year 1937 from January to November thereof inclusive, not to exceed Ten Percent (10%) of the products manufactured and produced by respondent have been sold and transported in interstate commerce from its plants in the State of California, to, into and through the states of the United States, other than the State of California, or territories of the United States, or foreign countries, and that all of the materials used by respondent in the manufacture of its products in the State of California are purchased or obtained by respondent entirely within the State of California.



Affiant further states that respondent during the last two fiscal years has not distributed, circulated or published any advertisements or circulars describing respondent's products, or soliciting sales of respondent's products without the State of California; that the only advertisements published by respondent during said period have been advertisements in the "Southwest Builder & Contractor", a trade publication published, printed and circulated within the State of California.

HENRY PRUSSING.

Subscribed and sworn to before me this 15th day of December, 1937.

[Seal]                      E. H. HOWLETT,  
Notary Public in and for the County of Los Angeles, State of California.

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[Title of Board and Cause.]

#### ORDER DESIGNATING TRIAL EXAMINER

A charge having been filed in this matter, and it having appeared to the Regional Director of the 21st Region that a proceeding in respect thereto should be instituted, and the Board having considered the matter and being advised in the premises,

It is hereby ordered that Dwight Stephenson act as Trial Examiner in the above case in place and stead of Clifford D. O'Brien and perform all the duties and exercise all the powers granted to trial

examiners under the Rules and Regulations—Series 1, as amended, of the National Labor Relations Board.

Dated, Washington, D. C., December 16, 1937.

By direction of the Board:

[Seal]

GEORGE O. PRATT,

Chief Trial Examiner

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[Title of Board and Cause.]

### INTERMEDIATE REPORT

Upon amended charges duly made and acting pursuant to authority of Section 10(b) of the National Labor Relations Act (herein called “the Act”), 49 U. S. Stat. 449, Towne Nylander, Regional Director for the Twenty-first Region, agent of the National Labor Relations Board (herein called “the Board”), acting pursuant to Article IV, Section 1 of its Rules and Regulations—Series 1, as amended, issued its Complaint December 9, 1937, against Los Angeles Brick & Clay Products Company, a corporation, respondent herein. The Complaint and Notice of Hearing thereon were duly served upon the respondent, upon Alberhill Clay Products Workers Union No. 373 (herein called “the Union”), the Central Labor Council, of Los Angeles, and upon Los Angeles Industrial Union Council, on December 9, 1937, in accordance with Article V, Section 1 of said Rules and Regulations.

With respect to unfair labor practices, the Complaint alleges in substance:

1. That respondent, on or about June 2, 1937, and on various succeeding dates, to and including the 10th day of June 1937, discharged, in the aggregate, thirteen of its employees for joining and assisting the Union and engaging in concerted activities, and for the same reason has refused to reinstate said employees.

2. That respondent, on or about the 25th day of June, 1937, for the same reasons, refused, and at all times since that date has refused, to re-employ and reinstate fourteen other of its employees, who had been on strike.

3. That respondent, on or about the 25th day of June 1937 did reinstate two of its employees who had been on said strike, to-wit: Sam Dabich and Nils Martensen, but for the reasons above stated did reduce their respective pay and assigned them to jobs other than those previously held by said Sam Dabich and Nils Martensen.

4. That respondent, on or about June 10, 1937, and at all times thereafter, refused to bargain with said Union, which Union had been designated by a majority of respondent's employees as their representative for the purpose of collective bargaining.

5. That the aforesaid acts of respondent constitute unfair labor practices affecting commerce within the meaning of Section 8, Subdivisions (1), (3),

and (5), and Section 2, Subdivisions (6) and (7) of said Act.

Thereafter respondent filed its Answer to the Complaint, in which it alleged that in the course of the conduct of its business respondent sold and transported not to exceed 10 per cent of its products in interstate commerce and that the balance was sold in the State of California; and that it purchased all of its raw materials within the State of California. The Answer denied that it discriminated against or discharged or refused to reinstate any employees or reduced the pay of any of them or altered the terms and conditions of the employment of any of them for the reason that said employees or any of them joined or assisted in union activities. The Answer further denied that said Union was the representative of a majority of respondent's employees or any unit thereof or that respondent had ever refused to bargain collectively within the meaning of or as required by the provisions of the Act.

Pursuant to the notice of hearing, the undersigned, as Trial Examiner of the Board, designated to conduct the hearing in this case, conducted a hearing in Riverside, California, on December 16, 17, 20, 21, 22, and 30, 1937, and on January 10, 1938, in Los Angeles, California.

Full opportunity to be heard, to cross-examine witnesses, and to produce evidence bearing upon the issues was afforded to each of the parties. The



parties were granted a reasonable period for oral argument at the close of the hearing and were afforded an opportunity to file briefs. Neither party desired or offered to argue the case or to file briefs.

Respondent, prior to filing its Answer, filed a Notice of Special Appearance and a Motion to Dismiss the Complaint for lack of Jurisdiction on the part of the Board. The motion was denied. On motion of counsel for the Board, the Complaint was dismissed without prejudice as to the alleged unfair labor practices in so far as the following employees of respondent were concerned, to-wit: C. W. Starr, Albert (Slim) Davis, Chas. Willard, Claude Pearl, Raymond Macht, Kenneth Norris, Chas. Bland, Nils Martenson, Juan Romero, Ernest Sill, and Mark Damron.

Upon the record as thus made, the stenographic report of the hearing, and all the evidence, including oral testimony, documentary and other evidence received in the hearing, the undersigned makes, in addition to the above, the following specific findings of fact:

## FINDINGS OF FACT

### I

#### Business of the Respondent

Los Angeles Brick & Clay Products Company is a California corporation organized January 10, 1900. Its principal plant is located in Alberhill, California, and it has approximately 140 employees at said plant. It is engaged in the manufacture,

sale, and distribution of face, fire, common, and paving brick, hollow, floor, drain, and roofing tile, sewer pipe, and flue lining. It also has a plant in the City of Los Angeles, and other property, none of which is involved in this hearing. The principal raw materials used in the manufacture of its products are clay and certain chemicals. All of said raw materials are either procured by respondent in the State of California or purchased from concerns maintaining places of business in said State.

The total volume of its sales for the year 1936 and from January to November 1937, both inclusive, amounted to approximately \$970,000. Of said sales, approximately \$131,000 in value were either by the respondent or its purchasers shipped outside the State of California. For either or both intrastate and interstate shipments, the respondent uses 13 different truck carriers and 5 different railroad carriers.

## II

### The Union

Alberhill Clay Products Workers Union, No. 373, holds a charter from International Union of Mine, Mill, and Smelter Workers, which is affiliated with the Committee for Industrial Organization. It admits to membership all employees of respondent engaged in the pits and in the production department of the plant, exclusive of clerical and supervisory employees, and is a labor organization within the meaning of Section 2, subdivision (5) of the Act.

## III

## The Unfair Labor Practices

## A. Organizational Efforts of the Union

The first attempt by the Union to organize the employees began in the latter part of May 1937, the first meeting being held on June 1, 1937. Notices announcing said meeting had been freely distributed among respondent's employees. Approximately 45 of the respondent's employees who attended that meeting applied for membership in the proposed Union. Several supervisory employees also attended the meeting and observed.

A second meeting was held on June 5, 1937, at which meeting the Union voted to apply for a charter, and elected the following officers, to-wit: Edward Hannum, president; Louis Juarez, vice-president; Lawrence C. McNutt, secretary and treasurer; and Mark Damron, doorman.

The next meeting was held on June 9, 1937, at which meeting it was decided to request the respondent to recognize the Union as the exclusive bargaining agency for its said employees. It was also decided to request the respondent to re-employ and put back to work those employees whose services were terminated subsequent to June 1, 1937, and then, if the work at the plant did not warrant full time for all employees, that all such employees be given equal number of hours of work each month and that all overtime, consisting of time over 8 hours per day and 40 hours per week, be paid for at the



rate of time-and-a-half. It was further voted to strike should said requests meet with refusal.

B. The Refusal to Bargain Collectively

The above-mentioned requests and notice of intention to strike should respondent fail to comply therewith, were incorporated in a written document, which document was delivered to the respondent on the morning of June 10, 1937. On said date, the Union comprised approximately 112 employees of the respondent engaged in the pits and in the production department of the plant at Alberhill, exclusive of clerical and supervisory employees.

The respondent failed to reply to the said requests of the Union, and the members thereof on the morning of June 11, 1937, went out on strike and established a picket line at the respondent's said plant.

On June 14, 1937, the Union again by letter requested respondent to recognize it as collective bargaining agent for the said employees. No reply to this letter was received by the Union.

Subsequently, and while the strike was still on, representatives of the Union and representatives of the respondent met in the offices of the Regional Director of the Board at Los Angeles, California, in an attempt to settle their differences, but they were unable to do so.

The employees of the respondent engaged in the pits and in the production department of the plant at Alberhill, exclusive of clerical and supervisory



employees, constitute an appropriate unit for the purpose of collective bargaining within the meaning of Section 9 (b) of the National Labor Relations Act.

A majority of said employees had designated Alberhill Clay Products Workers Union, No. 373, a labor organization as defined in the National Labor Relations Act, as their representative for the purpose of collective bargaining with respondent in respect to rates of pay, wages, hours of employment, and other conditions of employment. On June 9, 1937, and at all times since, Alberhill Clay Products Workers Union, No. 373, was and has been, by virtue of Section 9 (a) of said Act, the exclusive bargaining representative of all employees in such unit for the purpose of collective bargaining with the respondent in respect to rates of pay, wages, hours of employment, and other conditions of employment.

The Alberhill Clay Products Workers Union, No. 373, has attempted on June 10 and 16, 1937 to bargain with respondent, as exclusive representative of respondent's said pit and production employees in respect to rates of pay, wages, hours of employment, and other conditions of employment.

The respondent has at all times since June 10, 1937, refused to bargain collectively with Alberhill Clay Products Workers Union, No. 373, as exclusive representative of respondent's said pit and production employees in respect to rates of pay, wages,

hours of employment and other conditions of employment.

### C. The Lay-Offs

The complaint alleges the discriminatory discharge and refusal to re-employ a number of named individuals. The respondent denies that the discharges and subsequent failure to re-employ were because of union activities.

All of the employees hereinafter named were either known to the respondent to be engaged in organizing the Union or were observed in the picket line by the executive and supervisory employees of respondent.

The strike terminated on June 25, 1937, and the evening before the Union addressed a letter to the respondent requesting that certain employees, including those hereinafter named, be re-employed in order of their seniority. Requests for re-employment were also made in person by a number of the employees. The circumstances surrounding the lay-offs of each individual employee will be taken up in order, as follows:

#### 1. Lawrence McNutt

Lawrence McNutt commenced working for the respondent January 6, 1937, and continued until June 3, 1937, when he was laid off by respondent. The reason indicated by respondent was a sharp decline of business and the lack of orders on hand.

Mr. McNutt attended the first meeting and the subsequent meetings of the Union, and was elected

as its Secretary and Treasurer. At the time of his lay-off, he was receiving wages in the amount of 47½ cents per hour and had received two raises. On June 25, 1937, he applied for reinstatement and was refused.

There was some testimony that Mr. McNutt was physically too small properly to perform his duties. However, it is significant that he was selected to be laid off one day after the first indication of his union activities which were known to the supervisory employees of respondent.

I find that Lawrence McNutt was selected for lay-off by respondent on June 3, 1937, and has since been refused employment by respondent for the reason that said Lawrence McNutt joined and assisted a labor organization known as Alberhill Clay Products Workers Union, No. 373, and engaged in concerted activities for the purpose of collective bargaining and other mutual aid and protection.

## 2. Edward E. Hannum.

Edward E. Hannum commenced working for respondent in June, 1935, and was laid off on June 7, 1937. He had been elected President of the local Union. At the time of his lay-off, he was receiving 47½ cents per hour. He applied for reinstatement on June 25, 1937, but was refused. No complaints had ever been made in regard to his work, and he was given a letter of recommendation by respondent.

I find that said Edward E. Hannum was laid off by the respondent on June 7, 1937, and has since



been refused employment by respondent for the reason that he joined and assisted the Union and engaged in concerted activities for the purpose of collective bargaining and other mutual aid and protection.

### 3. Sylvester Osborne

Sylvester Osborne commenced working for respondent in September, 1936, and went out on strike June 11, 1937. He attended the first two meetings of the Union and signed an application for membership at the first meeting. At the time he went out on strike he was receiving 47½ cents per hour. He applied for reinstatement on June 25, 1937, and two times subsequent thereto, but was refused. No complaints had ever been made in regard to his work and he was given a letter of recommendation by respondent.

I find that Sylvester Osborne went out on strike on June 11, 1937, and has since been refused employment by respondent for the reason that he joined and assisted the Union and engaged in concerted activities for the purpose of collective bargaining and other mutual aid and protection.

### 4. Lester Hazelton

Lester Hazelton commenced working for respondent some time in December 1929, and was laid off June 3, 1937. At that time he was receiving a wage of 52½ cents an hour. He had received a number of raises, and when he applied for reinstatement



on June 25, 1937, was refused, but was given a recommendation. He had, prior to his lay-off, been active in the Union.

I find that Lester Hazelton was selected for lay-off by respondent on June 3, 1937, and has since been refused employment by respondent for the reason that said Lester Hazelton joined and assisted a labor organization known as Alberhill Clay Products Workers Union, No. 373, and engaged in concerted activities for the purpose of collective bargaining and other mutual aid and protection.

#### 5. Henry Boontjer

Henry Boontjer<sup>1</sup> commenced working for respondent on the 8th day of April 1937. Prior to June 8, when he was laid off, he had received one raise, which brought his wages to 42½ cents per hour. He applied for reinstatement with respondent about the middle of July, but was refused. He joined the Union at the meeting on June 5.

I find that Henry Boontjer was selected for lay-off by respondent on June 8, 1937, and has since been refused employment by respondent for the reason that said Henry Boontjer joined and assisted a labor organization known as Alberhill Clay Products Workers Union, No. 373, and engaged in con-

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(1) On motion of counsel for the Board at the hearing, the complaint was amended to include the charge that Henry Boontjer had been discharged because of Union activities.

certed activities for the purpose of collective bargaining and other mutual aid and protection.

6. Thomas A. Roddy

Thomas A. Roddy commenced working for respondent January 1, 1937. He joined the Union at the meeting on June 1, and was laid off June 3. At the time of his lay-off, he was receiving 47½ cents per hour. He applied for reinstatement on June 25, 1937, and three times subsequent thereto, but was refused.

I find that Thomas A. Roddy was selected for lay-off by respondent on June 3, 1937, and since has been refused employment by respondent for the reason that said Thomas A. Roddy joined and assisted a labor organization known as Alberhill Clay Products Workers Union No. 373, and engaged in concerted activities for the purpose of collective bargaining and other mutual aid and protection.

7. Gregorio Cordero

Gregorio Cordero commenced working for respondent April 17, 1937. He joined the Union at the meeting of June 1, and was laid off June 3. He was re-employed some weeks after the termination of the strike, on production of proof that he did not participate therein. He then continued working for about a month and a half, when he was discharged. Just before his discharge, he got into several fist fights with fellow employees and also made threats against his foreman.

I find that the discharge of Gregorio Cordero was not because of any union activities on his part.

8. William G. Ashworth

William G. Ashworth commenced working for respondent October 8, 1935; he joined the Union at the meeting of June 1, and was very active thereafter in its affairs. On June 8, he was laid off. He applied for reinstatement on June 25, 1937, but was refused. At the time of his lay-off he was receiving 50 cents per hour. He received from respondent a letter of recommendation.

I find that William G. Ashworth was selected for lay-off by respondent on June 8, 1937, and has since been refused employment by respondent for the reason that said William G. Ashworth joined and assisted a labor organization known as Alberhill Clay Products Workers Union, No. 373, and engaged in concerted activities for the purpose of collective bargaining and other mutual aid and protection.

9. Lawrence H. German

Lawrence H. German commenced working for respondent about January 27, 1937. He joined the Union at the meeting of June 1, and was laid off on June 9. He applied for reinstatement on June 25, 1937, and two times subsequent thereto, but was refused. At the time of his lay-off he was receiving 52½ cents per hour.

I find that Lawrence H. German was selected for lay-off by respondent on June 9, 1937, and



has since been refused employment by respondent for the reason that said Lawrence H. German joined and assisted a labor organization known as Alberhill Clay Products Workers Union, No. 373, and engaged in concerted activities for the purpose of collective bargaining and other mutual aid and protection.

10. Chester W. Lucas

Chester W. Lucas commenced working for respondent about July 1, 1935. He joined the Union at the meeting of June 1, and was very active thereafter in its affairs. On June 11, 1937, he went out on strike, and when the strike terminated, he applied for reinstatement on June 25, 1937, and two times thereafter, but was refused. At the time he went out on strike, he was receiving 62½ cents per hour.

I find that Chester W. Lucas went out on strike on June 11, 1937, and has since been refused employment by respondent for the reason that he joined and assisted the Union and engaged in concerted activities for the purpose of collective bargaining and other mutual aid and protection.

11. Arnold Moss

Arnold Moss commenced working for respondent April 13, 1937; he joined the Union on June 2, and was laid off on June 3. He applied for reinstatement on June 25, 1937, and several times subsequent thereto, but was refused.



I find that Arnold Moss was selected for lay-off by respondent on June 3, 1937, and has since been refused employment by respondent for the reason that said Arnold Moss joined and assisted a labor organization known as Alberhill Clay Products Workers Union, No. 373, and engaged in concerted activities for the purpose of collective bargaining and other mutual aid and protection.

12. James Grier

James Grier commenced working for respondent in January 1934. He joined the Union on June 5, 1937, and was laid off June 10th. He applied for reinstatement on June 25, 1937, and several times subsequent thereto, but was refused. At the time of his lay-off he was receiving 50½ cents per hour.

I find that James Grier was selected for lay-off by respondent on June 10, 1937, and has since been refused employment by respondent for the reason that said James Grier joined and assisted a labor organization known as Alberhill Clay Products Workers Union, No. 373, and engaged in concerted activities for the purpose of collective bargaining and other mutual aid and protection.

13. Frank German

Frank German commenced working for the respondent August 21, 1936. He joined the Union on June 1, 1937, and went out on strike June 11. After the strike ended and on June 25, 1937, he

applied for reinstatement, but was refused. At the time he went out on strike he was receiving 50½ cents per hour.

I find that Frank German went out on strike on June 11, 1937, and has since been refused employment by respondent for the reason that he joined and assisted the Union and engaged in concerted activities for the purpose of collective bargaining and other mutual aid and protection.

#### 14. Art Hannum

Art Hannum commenced working for respondent in February 1937, and went out on strike June 11, 1937. Some few days thereafter he joined the Union. He applied for reinstatement on June 25, 1937, but was refused. He now has a much better job and does not desire to be reinstated.

I find that Art Hannum went out on strike on June 11, 1937, and has since been refused employment by respondent for the reason that he joined and assisted the Union and engaged in concerted activities for the purpose of collective bargaining and other mutual aid and protection.

Further that said Art Hannum has secured other regular and substantially equivalent employment.

#### 15. Gerald Wenker

Gerald Wenker commenced working for the respondent in June 1936. He joined the Union on June 1, 1937, and was laid off on June 3. On June 25, 1937, he applied for reinstatement, but was re-

fused. At the time he was laid off, he was receiving 47½ cents per hour.

I find that Gerald Wenker was selected for lay-off by respondent on June 3, 1937, and has since been refused employment by respondent for the reason that said Gerald Wenker joined and assisted a labor organization known as Alberhill Clay Products Workers Union, No. 373, and engaged in concerted activities for the purpose of collective bargaining and other mutual aid and protection.

16. Glenn C. Stewart

Glenn C. Stewart commenced working for the respondent in December 1934; he joined the Union on June 5, 1937, and went out on strike June 11. On June 25, 1937, he applied for reinstatement, but was refused. At the time he went out on strike, he was receiving 52½ cents per hour.

I find that Glenn C. Stewart went out on strike on June 11, 1937, and has since been refused employment by respondent for the reason that he joined and assisted the Union and engaged in concerted activities for the purpose of collective bargaining and other mutual aid and protection.

17. M. J. Eaglin and M. G. Eaglin

M. J. Eaglin and M. G. Eaglin were employed by respondent in February 1937, and their employment terminated at the time of the strike, June 11, 1937. They each joined the Union on June 4, 1937. Neither man was present to testify at the hearing,



nor was any evidence introduced as to the reason for the termination of their employment. No evidence was introduced that they ever applied to respondent for re-employment. The record shows that on July 8, 1937, they were both given transportation to Nebraska by the State Relief Administration. The complaint should be dismissed as to M. J. and M. G. Eaglin.

18. Sam Dabich

Sam Dabich commenced working for the respondent in January, 1926. He joined the Union on June 1, 1937, and went out on strike June 11. At the time he went out on strike he was taking care of certain machinery, and was receiving a wage of 50½ cents per hour. After the strike terminated on June 25, 1937, he applied to Plant Superintendent for reinstatement, but was refused. Later he applied to the General Manager, who re-employed him on or about July 7, 1937. When he went back to work, the Plant Superintendent told him that he was starting in like a new man, and put him to work setting brick for one of the kilns at a wage of 47½ cents per hour. He is satisfied with his present work and wages.

I find that respondent did, on or about July 7, 1937, reinstate Sam Dabich, but did deprive him of rights and privileges previously enjoyed by him, and did reduce his rate of pay and wages and did assign him to a job other than the job which he had held prior to June 11, 1937.



I further find that respondent deprived the said Sam Dabich of rights and privileges previously enjoyed by him and reduced his rate of pay and wages, and assigned him to a job other than the job which he had held prior to June 11, 1937, for the reason that he joined and assisted the Union and engaged in concerted activities with other employees for the purpose of collective bargaining and other mutual aid and protection.

#### IV

#### Effect of Unfair Labor Practices Upon Commerce

Upon the whole record, the undersigned finds that the activities of respondent set forth in Section III above, occurring in connection with the operations of respondent set forth in Section I above, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States, and have led, and tend to lead, to labor disputes burdening commerce and the free flow of commerce.

#### CONCLUSIONS AND RECOMMENDATIONS

Upon the basis of the foregoing Findings of Fact, the undersigned hereby determines and concludes:

1. Respondent, by its lay-off and refusal to reinstate William G. Ashworth, Thomas A. Roddy, Arnold Moss, James Grier, Gerald Wenker, Lester Hazelton, Lawrence H. German, Lawrence McNutt, Edward E. Hannum, and Henry Boontjer; by its

refusal to reinstate Chester W. Lucas, Sylvester Osborne, Frank German, Glenn C. Stewart, and Art Hannum; by its deprivation of the rights and privileges previously enjoyed by Sam Dabich, and by its reduction of his rate of pay and wages; and by its refusal to bargain collectively with Alberhill Clay Products Workers Union, No. 373; by all of said acts has discouraged membership in the labor organization known as Alberhill Clay Products Workers Union, No. 373; and by interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed in Section 7 of the National Labor Relations Act, as set forth in the above Findings of Fact, has engaged in, and is engaging in, unfair labor practices affecting commerce within the meaning of Section 8, Subdivision (1), and Section 2, Subdivisions (6) and (7) of the National Labor Relations Act.

2. Respondent, by its lay-off and refusal to reinstate William G. Ashworth, Thomas A. Roddy, Arnold Moss, James Grier, Gerald Wenker, Lester Hazelton, Lawrence H. German, Lawrence McNutt, Edward E. Hannum, and Henry Boontjer; by its refusal to reinstate Chester W. Lucas, Sylvester Osborne, Frank German, Glenn C. Stewart, and Art Hannum; and by its deprivation of the rights and privileges previously enjoyed by Sam Dabich, and by its reduction of his rate of pay and wages, as set forth in the above Findings of Fact, has engaged in, and is engaging in unfair labor practices affect-

ing commerce within the meaning of Section 8, Subdivision (3), and Section 2, Subdivisions (6) and (7) of the National Labor Relations Act.

3. Respondent, by its refusal to bargain collectively with Alberhill Clay Products Workers Union, No. 373, as set forth in the above Findings of Fact, has engaged in, and is engaging in, unfair labor practices affecting commerce within the meaning of Section 8, Subdivision (5) of the National Labor Relations Act.

Wherefore, the undersigned recommends that:

1. Respondent cease and desist from interfering with, restraining, or coercing its employees in the exercise of the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection.

2. Respondent cease and desist from refusing to bargain collectively with Alberhill Clay Products Workers Union, No. 373, the representative of its employees engaged in the pits and in the production department of its plant at Alberhill, California, exclusive of supervisory and clerical employees.

3. In order to effectuate the policies of the Act, take the following affirmative action:

a. Respondent, upon request, bargain collectively with the Alberhill Clay Products Workers Union, No. 373, as the exclusive representative of its em-



ployees engaged in the pit and in the production department of its plant at Alberhill, California, exclusive of supervisory and clerical employees, in respect to rates of pay, wages, hours of employment and other conditions of employment.

b. Offer to Lawrence McNutt, Edward E. Hannum, Sylvester Osborne, Lester Hazelton, Henry Boontjer, Thomas A. Roddy, William G. Ashworth, Lawrence H. German, Arnold Moss, James Grier, Frank German, Gerald Wenker, and Glenn C. Stewart, immediate and full reinstatement to their former positions, without prejudice whatsoever to any of their rights and privileges.

c. Make whole said Lawrence McNutt, Edward E. Hannum, Lester Hazelton, Henry Boontjer, Thomas A. Roddy, William G. Ashworth, Lawrence H. German, Arnold Moss, James Grier, and Gerald Wenker, for any loss of pay any of them has suffered by reason of his lay-off, by payment to him of a sum equal to that which he would have normally earned as wages during the period from the date of his lay-off to the date of the aforesaid offer of reinstatement, less the amount earned by him during such period.

d. Make whole said Sylvester Osborne, Frank German, and Glenn C. Stewart, for any loss of pay any of them has suffered by reason of his going out on strike, by payment to him of a sum equal to that which he would normally have earned as wages dur-



ing the period from the date he applied for reinstatement and was refused, to the date of the aforesaid offer of reinstatement, less the amount earned by him during such period.

e. Post immediately notice to its employees in at least three conspicuous places in respondent's plant, stating: (1) that the respondent will cease and desist in the manner aforesaid; (2) that respondent's employees are free to join or to assist in any labor organization for the purpose of collective bargaining with respondent; (3) that respondent will not discharge or in any manner discriminate against members of Alberhill Clay Products Workers Union No. 373, or any other labor organization of its employees or any person assisting such organization, by reason of such membership or such assistance.

f. That said notice remain posted for a period of at least thirty consecutive days from date of posting.

g. File with the Regional Director of the Twenty-First Region, on or before ten days from the service of this Report upon respondent, a report in writing setting forth in detail the manner and form in which it has complied with the foregoing requirements.

It is further recommended that unless on or before ten days from the date of service of this Report upon respondent, respondent notifies said Regional Director in writing that it will comply with the foregoing recommendations, the matter be referred forthwith to the National Labor Relations Board,

and that said Board issue an Order requiring the respondent to take the action aforesaid.

Dated: April 30, 1937.

S/ DWIGHT STEPHENSON  
Trial Examiner.

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Copy

NATIONAL LABOR RELATIONS BOARD  
Washington, D. C.

J. Warren Madden, Chairman  
Edwin S. Smith  
Donald Wakefield Smith

September 22, 1938

Ellis, Howlett & MacLaren  
649 South Olive Street  
Los Angeles, California

Gentlemen:

Re: L. A. Brick &  
Clay Products Co., Case No. C-584

This is to advise you that regardless of previous notification or rulings by the Board or the Trial Examiner in the above-entitled matter, you are hereby granted the right, within ten days from the receipt of this letter, to apply for oral argument or permission to file briefs.

Yours very truly,  
NATHAN WITT,

Secretary.

Copy to:

Mr. Lawrence C. McNutty, Secretary, Alberhill Clay  
Products Workers' Union #373,  
Twin Springs,  
Corona, California.

L. A. Brick & Clay Products Co.,  
Alberhill, California.

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United States of America  
Before the National Labor Relations Board  
In the Matter of  
LOS ANGELES BRICK & CLAY PRODUCTS  
CO. and  
ALBERHILL CLAY PRODUCTS WORKERS'  
UNION NO. 373

Case No. C-584

Decided February 27, 1939

Brick and Clay Products Manufacturing Industry—Interference, Restraint, and Coercion: refusal to bargain collectively; discriminations in regard to hire and tenure of employment—Unit Appropriate for Collective Bargaining; no controversy; all employees of respondent at its Alberhill plant, including the pits, excluding foremen, supervisors, and office employees—Representatives: proof of choice: membership application cards; no controversy—Collective Bargaining: employer's duty during strike;

refusal of request by Regional Director; ignoring union's request for conference to negotiate agreement—Strike: prolonged by unfair labor practices—Discrimination: refusal to reinstate strikers: delayed reinstatements; hiring of new employees; charges of, in regard to terms and conditions of employment, dismissed as to one employee—Reinstatement Ordered: 15 strikers named in complaint, as amended, and upon application, 21 other strikers not named, dismissing employees hired since initial refusal to bargain, if necessary; preferential list—Back Pay: awarded; employees refused reinstatement; from September 1, 1937, date when substantially normal operations were resumed, until date of offer of reinstatement or placement on preferential list.

Mr. Frank A. Mauritsen, for the Board.

Ellis, Howlett & MacLaren, by Mr. E. H. Howlett and Mr. Towson T. MacLaren, of Los Angeles, Calif., for the respondent.

Mr. William Gateley, of Los Angeles, Calif., for the Union.

Mr. David Y. Campbell, of counsel to the Board.

## DECISION

and

## ORDER

### Statement of the Case

Upon charges and amended charges duly filed by Alberhill Clay Products Workers' Union No. 373, herein called the Union, the National Labor Rela-



tions Board, herein called the Board, by Towne Nylander, Regional Director for the Twenty-first Region (Los Angeles, California), issued its complaint dated December 9, 1937, against Los Angeles Brick & Clay Products Co., Alberhill, California, herein called the respondent, alleging that the respondent had engaged in and was engaging in unfair labor practices affecting commerce, within the meaning of Section 8 (1), (3), and (5) and Section 2 (6) and (7) of the National Labor Relations Act, 49 Stat. 449, herein called the Act. Copies of the complaint, accompanied by notice of hearing, were duly served upon the respondent and the Union.

With respect to the unfair labor practices, the complaint alleged in substance, (a) that on various dates between June 2 and June 10, 1937, the respondent discharged 13 employees<sup>1</sup> and at all times thereafter refused to reinstate them, for the reason that they joined and assisted the Union (b) that on or about June 25 and at all times thereafter the respondent refused to reinstate certain other named employees,<sup>2</sup> 16 in number, for the reason that they

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1 The names of these employees are: William Ashworth, Albert Davis, Lawrence German, James Grier, Edward Hannum, Lester Hazelton, L. McNutt, Arnold Moss, Claude Pearl, Thomas Roddy, C. Starr, Gerald Wenker, Charles Willard.

2 The names of these employees are: Charles Bland, Gregorio Cordero, Sam Dabich, Mark Dameron, M. G. Eaglin, M. J. Eaglin, Frank German, Art Hannum, C. Lucas, Raymond Macht, Nils Martinson, Kenneth Norris, Sylvester Osborne, Juan Romero, Ernest Sill, Glenn Stewart.

joined and assisted the Union; (c) that on or about June 25 the respondent reinstated Sam Dabich and Nils Martinson but deprived them of all rights and privileges previously enjoyed by them, reduced their rates of pay and wages and assigned them to work different from their former positions, for the reason that they joined and assisted the Union; (d) that on or about June 10 and at all times thereafter the respondent refused to bargain collectively with the Union as the representative of its employees in an appropriate unit, although the Union has been designated by a majority of employees therein as their representatives; (e) that by the afore-mentioned acts, the respondent interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act.

The respondent, in its answer filed at the hearing, denied that it was engaged in or that its business affected interstate commerce, and denied the allegations of the complaint as to the unfair labor practices.

Pursuant to an amended notice, a hearing was held on December 16, 17, 20, 21, and 22, 1937 at Riverside, California, and on December 30, 1937, and January 10, 1938, at Los Angeles, California, before Dwight Stephenson, the Trial Examiner duly designated by the Board. The Board and the respondent were represented by counsel and participated in the hearing. The Union was represented by its international organizer and likewise partici-

pated in the hearing. Full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing upon the issues was afforded all parties. At the hearing the respondent moved to dismiss the complaint on the ground that the Board had no jurisdiction of the subject matter. This motion was denied by the Trial Examiner at the conclusion of the hearing. On the first day of the hearing counsel for the Board moved to amend the complaint to include the name of Henry Boontjer among the names of employees alleged to have been discriminated against. This motion was allowed by the Trial Examiner. The hearing continued for 6 days thereafter, over a period of some 25 days, and the issues raised by the amendment are substantially the same as those which existed under the original complaint. The trial Examiner's ruling is hereby affirmed.<sup>3</sup> Counsel for the Board also moved to dismiss the allegations of the complaint as to 11 named persons<sup>4</sup> on the ground that they had failed to appear at the hear-

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3 Cf. *National Labor Relations Board v. American Potash and Chemical Corporation*, 98 F. (2d) 488 (C. C. A. 9th). See also *Matter of McKaig-Hatch, Inc. and Amalgamated Association of Iron, Steel, and Tin Workers of North America*, Local No. 1139, 10 N. L. R. B., No. 4.

4 The names of these persons are as follows: Charles Bland, Mark Damron, Albert Davis, Raymond Macht, Nils Martinson, Kenneth Norris, Claude Pearl, Juan Romero, C. Starr, Ernest Sill, Charles Willard.



ing. This motion was allowed by the Trial Examiner. The Trial Examiner made various rulings on other motions of the parties, and on objections to the admission of evidence. The Board has reviewed all the rulings of the Trial Examiner and finds that no prejudicial errors were committed. The rulings are hereby affirmed.

On April 30, the Trial Examiner issued his Intermediate Report, which was filed with the Regional Director and duly served upon all the parties, finding that the respondent had engaged in and was engaging in unfair labor practices, within the meaning of Section 8 (1), (3), and (5) and Section 2 (6) and (7) of the Act. He recommended that the respondent cease and desist from its unfair labor practices; reinstate, with back pay, certain of its employees found to have been **discriminated against** in regard to hire and tenure of employment;<sup>5</sup> upon request, bargain collectively with the Union as the exclusive representative of its employees in the appropriate unit; and take certain other appropriate action to remedy the situation brought about by the respondent's unfair labor practices. The Trial Examiner also recommended dismissal of the complaint, as amended, as to M. G. and M. J. Eaglin on the ground that they had failed to appear and

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<sup>5</sup> The names of these employees are: William Ashworth, Henry Boontjer, Frank German, Lawrence German, James Grier, Edward Hannum, Lester Hazleton, Lawrence McNutt, Arnold Moss, Sylvester Osborne, Thomas Roddy, Glenn Stewart, Ger-



testify at the hearing.<sup>6</sup> On May 11, the Union filed exceptions to the Intermediate Report. These exceptions deal with certain omissions from the Trial Examiner's conclusions and recommendations therein, above noted.<sup>7</sup> On May 31 the respondent filed its exceptions. The parties, although accorded an opportunity for oral argument before the Board, made no request therefor. We have considered both the respondent's and the Union's exceptions to the Intermediate Report, and in so far as they are inconsistent with the findings, conclusions and Order below, find them to be without merit.

Upon the entire record in the case, the Board makes the following:

## FINDINGS OF FACT

### I.

#### The Business of the Respondent

The respondent, Los Angeles Brick & Clay Products Co., is a California corporation engaged in the

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ald Wenker. While the Trial Examiner also found Chester Lucas and Art Hannum were similarly discriminated against, their names were omitted from his recommendations. No recommendation was made with respect to Sam Dabich, whom the Trial Examiner found to have been discriminated against as to terms and conditions of employment.

6 There was no recommendation as to the dismissal of Gregorio Cordero's name from the complaint, although the Trial Examiner failed to find that he has been discriminated against.

7 See footnote 5, *supra*. The errors are evidently typographical.

business of manufacturing, selling, and distributing brick, tile, sewer pipe, and flue lining. Its plant is located at Alberhill, Riverside County, and its principal office is located at Los Angeles, both in the State of California. The respondent employs approximately 150 persons at the plant. All of its raw materials are procured from sources in California.

The respondent's gross annual sales amount to about \$500,000. During the first 11 months of 1937, its total net sales of finished products amounted to \$463,671. Of this amount the respondent sold and delivered to points outside California products valued at \$32,149. The respondent further sold and delivered products valued at \$40,771 to purchasers for intended shipment outside California, such intention being set forth on the purchase orders. About \$13,425 worth of finished products also were sold and delivered to railroads for intended shipment outside California during the same period. Thus, during the period under consideration, approximately 18.6 per cent. of the respondent's finished products, amounting to about \$86,345 in value, were sold for shipment or shipped by the respondent to destinations outside California.

## II.

### The Organization Involved

Alberhill Clay Products Workers' Union No. 373 is a labor organization chartered by International Union of Mine, Mill and Smelter Workers, affiliated

with the Committee for Industrial Organization. It admits to membership all employees of the respondent except foremen, supervisory employees, and clerical employees.

### III.

#### The Unfair Labor Practices

##### A. The Respondent's attitude toward the union

The Union began its organizational activities with a meeting of the respondent's employees on June 1, 1937. About 50 to 70 of the respondent's employees attended, of whom 33 signed application cards for membership. During the ensuing week the Union formed its internal organization and within a short time thereafter, over 60 per cent of the respondent's employees joined the Union. The respondent knew in advance that the meeting of June 1 was to be held. According to the testimony of Baer, the foreman, he, Bodine, the plant superintendent, and Mills and Gantz, also foremen, were present at the meeting for at least 45 minutes, during which time a substantial number of employees signed application cards. Baer admitted that he recognized about 20 of his subordinates at the meeting. Baer testified that "we attended to merely see . . . what was going on and what the activity was."

On June 2 Gantz discussed the Union during the entire noon hour with Ashworth, one of the employees under Gantz. Gantz stated to Ashworth that the employees should renounce outside affila-



tions and form their own union. Gantz further told Ashworth that the employees were "fools" to allow themselves to be led by a man such as Green, the union organizer. Later the same day Gantz came to the kiln where Ashworth and McNutt, another employee, were working and remarked, "You fellows are fools to affiliate with the C. I. O. or any outside organization. You should form a union, yourselves, and stay clear of all outside affiliations." Gantz admitted that he had seen McNutt at the union meeting the evening before. On June 8, following Ashworth's lay-off, Gantz again remarked to Ashworth, "The mistake you fellows made from the start was joining up with any outside organization whatever. You should have just formed an employees' union here in this one plant and stayed clear of all outside affiliations." Gantz's denial that he made the foregoing statements fails to convince us in view of the clear testimony of both Ashworth and McNutt.

Several weeks prior to the Union's first efforts to organize the respondent's employees, Bodine approached Hazleton, an employee, and, advising him that efforts would probably be made to unionize the plant, said, "In case the union comes in here, there won't be [any] chance for a bonus this coming year like there was last year . . . Spread [the word] around over the yard among the boys there." Hazleton did not carry out Bodine's instructions.



Bodine admitted having told Hazleton that he anticipated union activity among the employees, but denied that he made any statement concerning payment of the bonus. The record, however, shows that Bodine played a prominent part in the respondent's acts of opposition toward the Union. We do not believe his testimony with respect to the Hazleton conversation.

It is apparent from the above-described conduct of its supervisory employees that the respondent was opposed to the union organization of its employees. Its hostility toward the Union affords a significant background for our consideration of its activities which constituted the unfair labor practices alleged in the complaint, as amended.

B. The refusal to bargain collectively

1. The appropriate unit

The complaint alleges that the appropriate unit consists of all employees of the respondent in the pits and in the production department of the plant, excluding foremen, supervisors, and office employees. Such employees are eligible for membership in the Union and may properly constitute an industrial bargaining unit. The respondent does not question the propriety of this unit.

We find that all the employees of the respondent at its Alberhill plant, including the pits, excluding foremen, supervisors, and office employees, constitute a unit appropriate for the purposes of collective bargaining and that said unit insures to em-

ployees of the respondent the full benefit of their right to self-organization and collective bargaining and otherwise effectuates the policies of the Act.

2. Representation by the Union of the majority in the appropriate unit

The respondent employed approximately 164 persons<sup>8</sup> in the appropriate unit on June 10, 1937. Of these, 108<sup>9</sup> employees had signed application cards for membership in the Union on or before June 10. From June 11 to 14, inclusive, 10 additional employees in the appropriate unit signed such application cards. The authenticity of these 118 application cards, which were introduced in evidence, was not disputed by the respondent.

We find that on June 10, 1937, and at all times thereafter, the Union was the duly designated representative of a majority of the employees in a unit appropriate for collective bargaining, and pursuant to Section 9 (a) of the Act, was the exclusive representative of all the employees in such unit for purposes of collective bargaining in respect to rates of pay, wages, hours of employment, and other conditions of employment.

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8 This figure includes the 43 employees who were temporarily laid off previous to June 10. See Matter of Kuehne Manufacturing Company and Local No. 1791, United Brotherhood of Carpenters and Joiners of America, 7 N. L. R. B. 304, 323.

9 Ray Mains is shown on Respondent Exhibit No. 1 as having joined on June 18. An examination of Mains' application card, however, convinces us that the correct date is June 10.

### 3. The refusal to bargain

As stated above, the Union began organizational activities with a meeting of the respondent's employees on June 1. A substantial number of employees joined the Union in the presence of Bodine, Baer and Gantz. Several days before, a general wage increase had been announced by the respondent, effective June 1. On June 2, in the morning, the respondent announced a reduction in force, stating that it was for economy reasons. By June 9, 43 employees were laid off, including a substantial number of union members. On that day, perturbed by the lay-offs, the Union held a meeting to formulate bargaining requests.

On June 10, at about 7:30 a. m., a committee of the Union composed of the respondent's employees, presented to Bodine a memorandum setting forth demands: (a) that the respondent recognize the Union as the bargaining agent of its employees; (b) that all employees laid off since June 1 be reinstated by the following morning and that all employees be given an equal number of hours of work; and (c) that all time worked in excess of 8 hours per day or 40 hours per week be paid for at the rate of one and one-half times the regular rate of pay. The memorandum granted the respondent until midnight of the same day to signify acceptance or refusal of the demands, and concluded with the statement that "in the existence of no notification by the specified hour the Union shall act upon the



supposition that their requests have been denied and will not be complied with.” A copy of the demands was also delivered to the respondent’s office in Los Angeles. Bodine turned over the memorandum to Larson, the respondent’s general superintendent, upon the latter’s arrival at the plant at about 10 a. m.

At about 3:45 p. m. Bodine approached Lucas, a member of the Union’s committee, and told him that the respondent would take no action upon the Union’s requests; that the Union had nothing to back it up in its demands; and that the respondent would ignore the request. We are unable to accept Bodine’s denial of this version of the conversation. We have found above that Bodine’s credibility is in doubt. We see no reason to accord his testimony greater weight here. No further word was received from the respondent by the Union. Early the following morning all but six of the employees struck in accordance with a previous vote taken by the Union. A picket line was formed and maintained throughout the strike. Shortly after the formation of the picket line Baer, one of the foremen, remarked to Arthur Hannum, a striker, that if the employees had formed a “company union in there or the A. F. of L. . . . Mr. Larson would have come around and talked business,” but that Larson did not like the policies of the C. I. O. Hannum’s testimony with respect to this statement was not controverted by Baer, who was called as a witness for the respondent.



During the strike Larson met with officials of the Union in the office of the Regional Director, at the latter's request, to discuss the June 10 requests and a proposed settlement of the strike. McNutt, the secretary-treasurer of the Union, testified that the Regional Director asked Larson whether or not the respondent would bargain with the Union; that Larson replied he "would never have a union in [his] plant if [he] had to close it down for good." Larson admitted that he made no response to the request to bargain with the Union.

Larson, however, denied the testimony of McNutt and further testified as follows: that on June 15 he (Larson) saw Nylander, the Regional Director, and Howard, the Chief Field Examiner, in Nylander's office; that both Nylander and Howard assured Larson that the strike was illegal and that they would endeavor to have the strike called off; that he (Larson) had two subsequent conferences with Nylander and Howard; that he had a fourth and last conference with Nylander on June 23 or 24, which was the meeting referred to by McNutt. Larson later testified, however, that one of the conferences with Nylander was held after the termination of the strike, on or about June 28.

Other evidence clearly establishes that the conference referred to by McNutt took place on June 15 and not on June 23 or 24, as Larson testified. The contradictions in Larson's testimony and his admission that he made no response to the request

to bargain with the Union cast doubt upon his credibility as a witness. We find that on June 15, 1937, Larson made the statement to which McNutt testified.

On June 16 the respondent commenced to rehire employees. Fifty-nine striking employees were rehired while the strike was still in progress. On the same day McNutt, as secretary-treasurer of the Union, in a letter to the respondent, made the following request:

As the representatives of your employees  
\* \* \* selected by your employees to bargain  
collectively for them we herewith request that  
you advise us within three days of a time and  
place for a meeting to negotiate an agreement.

The respondent did not reply to the Union's request and the strike continued until June 25, when the union members met on the picket line and voted to terminate the strike. The same day McNutt, in his official capacity, again wrote to the respondent, and requested the reemployment in order of seniority of the Union's members named on an attached list. The respondent, however, ignored this request and on June 28 it began to hire new employees.

The respondent's principal defense is that the June 10 demands of the Union set an unreasonable limit of time in which the respondent might accept or reject them; that neither Bodine nor Larson had authority to act on the demands; and that before

the respondent had an opportunity to act the strike was called. Without passing upon the validity of this defense with reference to the respondent's action prior to the strike, it is clear that it does not justify the refusal of the respondent to bargain subsequent to June 11. The existence of the strike did not relieve the respondent of its statutory duty to bargain collectively with the representatives of its employees.<sup>10</sup>

The respondent's further argument that Larson did not know how to communicate with the Union after the employees were on strike does not bear inspection. Larson met with the Union's officials on June 15 and was then asked to bargain with the Union. Furthermore, the record is devoid of evidence that Larson ever attempted to bring the matter before the respondent's board of directors, with whom the authority to act on the Union's request is alleged to have rested. The record yields a strong inference that the respondent gave the Union's proposal no serious consideration and we conclude that Bodine accurately stated the respondent's position, that it "would ignore the request."

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10 Cf. Matter of Jeffery-DeWitt Insulator Company and Local 455, United Brick and Clay Workers of America, 1 N. L. R. B. 618, 625, order enforced in *Jeffery-DeWitt Insulator Company v. National Labor Relations Board*, 91 F. (2d) 134 (C. C. A. 4th), certiorari denied, 302 U. S. 731; Matter of Kuehne Manufacturing Company and Local No. 1791, United Brotherhood of Carpenters and Joiners of America, 7 N. L. R. B. 304.



The respondent further contends that the Union offered no proof that it had been designated by a majority of the respondent's employees as their representative for collective bargaining. That the Union represented a majority of the employees during the strike was obvious, nor did the respondent question the Union's status as such representative. The picket line furnished tangible evidence to support the Union's position. Further proof was never requested by the respondent.

We need not determine whether the June 10 memorandum technically constituted a request to the respondent to bargain collectively with the Union. Such request clearly was made at the June 15 conference, which was called to discuss the Union's demands and to arrive at terms for the settlement of the strike. Larson's expression of unalterable opposition toward the Union made such discussion futile and collective bargaining impossible. By ignoring the Union's further request on June 16 for an appointment to negotiate an agreement, the respondent continued its policy of refusing to bargain collectively with the Union and continued to obstruct the possible settlement of the strike.

We find that the respondent, on June 15, 1937, and at all times thereafter, refused to bargain collectively with the Union as the representative of its employees in the appropriate unit in respect to rates of pay, wages, hours of employment, and other



conditions of employment; and that by such acts the respondent has interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed them by Section 7 of the Act. We further find that the respondent, by its refusal to bargain collectively with the Union, caused a prolongation of the strike.

C. The lay-offs, the refusals to reinstate, and the delayed reinstatements

The complaint, as amended, alleges that the respondent discriminatorily discharged certain named employees prior to the strike and thereafter refused reinstatement to them and to others of the strikers because of their union membership and activity. The record does not establish that the discharges or lay-offs were discriminations as to hire or tenure of employment contrary to Section 8 (3) of the Act. There remains the question of whether or not the respondent committed unfair labor practices by refusing to reinstate certain of the strikers.

Following the termination of the strike on June 25 an application was made by the Union to the respondent to reinstate in order of seniority 118 named striking employees. Some 36 of the strikers, including 4 employees not named in the application, have not been reinstated. William Ashworth, Henry Boontjer, Frank German, Lawrence German, James Grier, Arthur Hannum, Edward Hannum, Lester Hazleton, Chester Lucas, Lawrence McNutt, Arnold Moss, Sylvester Osborne, Thomas Roddy, Glenn

Stewart, and Gerald Wenker are among the employees who have not been reinstated. Their names were included in the June 25 application for reinstatement. All but Wenker and Hazleton also applied in person to Bodine for reinstatement after the strike.

The respondent contends generally that it decreased its volume of production after the strike and consequently reduced its personnel. It appears from the record, however, that on June 25 the respondent had 66 employees on its pay roll; on June 30, there were 101. On August 31 there were 153 employees on the pay roll. On the other hand, on June 1 there were 148 employees working. On June 2, the day the lay-offs commenced, 155 employees were working. Further, it is admitted that the respondent had resumed substantially normal operations by about the first of September. From June 25, the date when the strikers applied for reinstatement, through August 31, the respondent hired 30 new employees.

It is clear that the respondent could have reinstated by September 1 all but 2 of the 32 strikers who had applied for reinstatement. Nevertheless, the respondent failed to take back any of the 32 strikers who applied for reinstatement, including the 15 named above. The validity of the respondent's contention extends, therefore, only so far as the respondent may show by credible evidence that all or any of the 15 employees named in the com-

plaint, as amended, were not reinstated for cause to those positions for which new employees were hired. We will discuss below the respondent's evidence in this respect.

Moreover, the record, in two particulars, supports the conclusion that the reason for the respondent's refusal to take back the 15 strikers named above was their activity in and support of the Union. In the first place many of the more active members of the Union were included among those not reinstated. Thus Edward Hannum was president of the Union; McNutt was the secretary-treasurer. McNutt and Ashworth, as we have set forth above in discussing the respondent's anti-union attitude, were berated by their foremen as "damn fools to join the C. I. O." Lucas and Stewart were on the committee which presented the Union's first demands to Bodine on June 10. Lucas accompanied McNutt and Edward Hannum to the June 15 conference with Larson to settle the strike.

In the second place the circumstances surrounding the denial of reinstatement to the strikers here involved reveal clearly the respondent's attitude. Stewart was refused reinstatement by Bodine on June 25 because Stewart "got off on the wrong foot." Osborne was told by Bodine to look elsewhere for a job, Bodine adding, "You boys will be careful what you sign after this." Bodine denied having made such statements. The testimony of Osborne and Stewart concerning Bodine's refusals to rein-



state them substantially accords with the testimony of other employees who testified. We are convinced that here, too, Bodine is not to be credited. Bodine told others who applied on June 25 and during the remaining 4 working days in June that the respondent would hire no more employees since all that were needed had been reemployed; that "it would be favorable for you boys to forget" the respondent. Bodine's remark to Osborne clearly related the refusal to reinstate Osborne with his signing an application card for membership in the Union. Bodine's statement to Stewart, and his advice to striking employees "to forget" the respondent, can have but one meaning: that as to them Bodine regarded their union activity as a bar to their employment by the respondent.

In the light of these circumstances we turn to a consideration of the specific reasons alleged by the respondent for its failure to reinstate each of the strikers named above.

McNutt, Ashworth, and Boontjer were employed as kiln drawers under Gantz. Ashworth was a crew leader. He received 50 cents per hour; McNutt, 47½ cents per hour; and Boontjer, 42½ cents per hour. The work requires no special training or skill. The respondent contends that Ashworth and McNutt were too light to perform the duties of their jobs. Both had received raises during the course of their employment and no question as to the competency of any of the three men appears to have been raised



during the period of their employment prior to the strike.

The respondent further contends that Ashworth was not rehired after the strike because his work was being handled by other employees; that Boontjer was not qualified for the general labor jobs available; and that McNutt was qualified for a better job than any that were available. The respondent offers no explanation, however, as to why, with the plant operating at substantially normal capacity by September 1, their former or substantially equivalent positions could not have been made available to these employees.

The reasons assigned for the failure to reinstate Ashworth, McNutt, and Boontjer lack plausibility.

Frank German and Grier were employed as truck drivers, for which each was paid 50½ cents per hour. Both had previously worked at various jobs in the plant as general laborers. Both were active in the picket line.

The respondent contends that German was not reinstated because only general labor jobs were available. As in the case of McNutt, Ashworth and Boontjer, however, the respondent gives no reason why, with the plant operating at substantially normal capacity, it could not have restored German to his former or a similar position.

It is admitted that Grier was replaced by a new employee. The respondent contends, however, that Grier was discharged prior to the strike for ineffi-

ciency. Grier was given letters of recommendation during the strike by both Bodine and Mills, the foreman, attesting to Grier's competency. We find from other evidence that Grier was laid off due to the reduction in force prior to the strike. The respondent admits that employees so laid off prior to the strike retained their status as employees.<sup>11</sup>

We are unable to credit the respondent's contentions as to its alleged reasons for not reinstating Grier and German.

Moss, Roddy, and Osborne were employed as general laborers. Roddy and Osborne each received 47½ cents per hour; Moss' earnings do not appear. Moss and Roddy were on the picket line. Bodine testified that a new man was hired in place of Moss "because of the nature of the work." No further explanation was given. Bodine also testified that Osborne's former position is still vacant and that he was not reinstated "because of the nature of the work we had to offer him." This is inconsistent with Bodine's statement that German was not reinstated because "we didn't have any job other than laborer." Bodine further testified that Roddy was not reinstated "because of inefficiency, and I would say stupid, not quick to receive instructions, and so forth." Bodine, however, admitted on cross-examination:

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<sup>11</sup>Matter of Kuehne Manufacturing Company, footnote 8, *supra*.

Q. Well, now, let us get this clear about Mr. Roddy. Was his work satisfactory?

A. As far as I know, his work was satisfactory.

We find that the reasons assigned by Bodine for the failure to reinstate Moss, Osborne, and Roddy are equally unsatisfactory.

Lawrence German and Lucas received 52½ cents and 62½ cents per hour, respectively, as mechanics on the general maintenance crew. German and Lucas are the only members of the crew who have not been reinstated. The evidence indicates that one new employee was hired and one employee was transferred to work on the crew after the strike. This is not specifically denied by the respondent, although Bodine testified that the position formerly occupied by Lucas has not been filled. Although the record does not disclose whether or not the two new employees added to the crew were hired as mechanics, it is not shown that German and Lucas were unqualified to fill these positions.

Stewart was leverman on the steam press, for which he was paid 52½ cents per hour. No explanation is offered by the respondent as to why Stewart was not reinstated.

The respondent contends that Wenker's former position is not steady. Wenker was employed as regular transfer man at 47½ cents per hour, for 8 months prior to the strike. The work of a transfer man is a regular part of production. The respondent



ent's contention as to Wenker is contrary to the evidence.

The respondent alleges that Edward Hannum's former position on the dry press is still vacant due to decreased volume of production. Hannum also had worked in various capacities during his 2 years of employment. There is considerable interchange of jobs and classifications. No reason is advanced why Hannum was not offered reinstatement to one of the positions filled by new employees. Hannum received 47½ cents per hour.

Hazleton was employed for 7½ years. At the time of the strike he loaded and inspected sewer pipe, for which he was paid 52½ cents per hour. It was Hazleton whom Bodine sought to use as an agent to forestall the formation of the Union. Hazleton's failure to do Bodine's bidding showed the respondent where Hazleton's sympathies lay with reference to self-organization and collective bargaining. Bodine testified that he did not reinstate Hazleton because he believed that for Hazleton to work at a lesser rate of pay than he had received "would probably be humiliating" for Hazleton. Bodine did not explain why Hazleton's rate of pay would have been decreased. It does not appear that Hazleton's former position was abolished, nor is it shown that his work was assigned to other employees after the strike. The respondent's further contention that Hazleton was inefficient does not appear to be urged seriously, nor is it supported by the evidence.



We think that no credible reason has been advanced by the respondent for not taking back Hazleton.

Arthur Hannum remained on duty as burner on the tunnel kiln after the strike commenced, until he was relieved by Baer. Baer admitted that the kiln was in satisfactory condition; that he was qualified to tend the kiln; and that he thanked Hannum for not leaving the kiln unattended, so as to prevent damage. Hannum's conduct in leaving his post to join other employees on strike offers no cause for refusing him reinstatement.

Hannum applied to Bodine in person on June 25 for reinstatement. Bodine replied that the operation of the tunnel kiln was discontinued, and indicated that the discontinuance was permanent. Operation of the kiln was recommenced in early August and was being continued at the date of the hearing. Bodine testified that Hannum was not reinstated because Hannum had left the vicinity prior to the resumption of the kiln's operation. He admitted, however, that he did not intend to reinstate Hannum to his former position as burner because Hannum had been guilty of sleeping while on duty. It appears that a burner's duties require close attention to prevent damage to the kiln. The respondent does not assert that the incident was a ground for refusing Hannum's reinstatement to other work which new employees were hired to perform between June 25 and July 14, when he left the vicinity. Hannum

had previously been employed by the respondent as a laborer.

Furthermore, Hannum was neither discharged nor disciplined for his offense. He was asleep for 10 minutes and no damage was caused. According to the respondent's evidence Hannum continued working as a burner until the strike, some 12 days later. Larson testified that he discussed with Baer the replacement of Hannum, and that the strike occurred before a new burner had been selected. Larson later testified, however, that Hannum was not replaced because the kiln was to be closed in 15 or 18 days and it was not desired to "break in" a burner for that length of time. Baer, although called as a witness, did not testify regarding the discussions with Larson. We find elsewhere that Larson is not a credible witness. Because of the inconsistency in his testimony we do not accord it weight here. We conclude that the respondent regarded Hannum's dereliction as minor; that the gravity now asserted for the incident is an afterthought. The respondent's alleged reason for not having reinstated Hannum prior to the hiring of new employees must be rejected.

On June 11, the last day he worked, Hannum received 47½ cents per hour. Since July 14 he has been employed elsewhere at higher wages. The record does not establish, however, that he has received substantially equivalent employment.

The respondent contends that the fact that other members of the Union have been reinstated shows the absence of discrimination. Such result was inevitable unless the respondent replaced all members of the Union with new employees; in such case the fact of discrimination would have required no further proof. The respondent's contention provides no answer to the replacement of some of the strikers by new employees.

The respondent admits that it knew that strikers were available for reemployment at the time it hired new employees. In attempted explanation for its refusal to take back strikers, the respondent contends that it could not reasonably be expected to assume the burden of soliciting employees to return to work. The respondent's position rests either upon the false premise that the strikers made no attempt to return to work after the termination of the strike or upon the equally fallacious proposition that the strikers, by virtue of the strike, lost their status as employees. The contrary of the latter proposition is too well settled to require discussion, and, moreover, is admitted in the record.

The strike, if not provoked by the respondent's unfair labor practices, was certainly prolonged by its unfair labor practice in refusing to bargain collectively with the Union. The strikers thus remained employees of the respondent within the meaning of the Act and were entitled to reinstatement to their former or substantially equivalent positions upon ap-



plication therefor.<sup>12</sup> such application for reinstatement was made by the Union, as well as by most of the employees individually, at the termination of the strike. Inasmuch as the plant was operating at approximately normal capacity by September 1, the respondent could have reinstated all but two of the strikers, who had signified a desire to return, to their former or substantially equivalent positions. The respondent, however, while refusing to reinstate the strikers here involved, employed 30 new employees within the first few weeks after the end of the strike. The respondent has failed to show, in the case of any of the strikers named above, any plausible reason for its failure to reinstate him or for its giving preference to the new employees. On the other hand, the evidence shows affirmatively that the strikers in question were denied reinstatement because of their union membership and activity. Our conclusion in this respect is confirmed by the respondent's treatment of Cordero and Dabich, considered below.

We find that the respondent has discriminated in regard to the hire and tenure of employment of William Ashworth, Henry Boontjer, Frank German, Lawrence German, James Grier, Arthur Hannum, Edward Hannum, Lester Hazleton, Chester

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<sup>12</sup>See Matter of Black Diamond Steamship Corporation and Marine Engineers' Beneficial Association, Local No. 33, 3 N. L. R. B. 84, order enforced in Black Diamond Steamship Corporation v. National Labor Relations Board, 94 F. (2d) 975 (C. C. A. 2d), certiorari denied, 304 U. S. 579.



Lucas, Lawrence McNutt, Arnold Moss, Sylvester Osborne, Thomas Roddy, Glenn Stewart, and Gerald Wenker, thereby discouraging membership in the Union; that it thereby has interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act.<sup>13</sup>

In addition to the allegations with respect to the foregoing employees, the complaint alleged that the respondent had discriminated in regard to the hire and tenure of employment of Gregorio Cordero and Sam Dabich in refusing their reinstatement after their application on June 25. Cordero and Dabich were reinstated on July 7. The names of both employees appeared on the list submitted by the Union to the respondent on June 25, above mentioned. Cordero was among the employees laid off temporarily prior to the strike.<sup>14</sup> Dabich went on strike with other members of the Union and was active in the picket line.

Cordero applied personally to Bodine for reinstatement on or about July 1, without immediate success. Cordero testified that Bodine told him to return in a few days; that he returned as instructed,

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<sup>13</sup>See Matter of Western Felt Work and Textile Workers Organizing Committee, Western Felt Local, 10 N. L. R. B., No. 31.

<sup>14</sup>We already have pointed out that such employees retained their status as employees of the respondent during and subsequent to the strike. See footnote 11, *supra*.

and was refused reinstatement; that Bodine said that he had reports that Cordero "was making a lot of trouble in the case of the Union" and that he would not reinstate Cordero for that reason; that he then brought Bodine a letter to prove that he was not active in the strike, but had been temporarily employed elsewhere; that thereupon Bodine reinstated him.

Bodine denied making the remarks which Cordero testified occasioned the production of the letter, or that the letter was in any way connected with the later decision to reinstate Cordero. Bodine further testified that during the strike he learned that persons residing in the "company camp" had complained to the deputy sheriff of being disturbed by Cordero's loud talking at night; that Cordero's reinstatement was delayed because of the reported complaints; that Cordero denied making any disturbance; and that several days later Bodine decided that Cordero "was worthy of re-hiring." Bodine admitted that he made no investigation of the alleged complaints, nor was there evidence introduced to show that complaints actually were made. We have heretofore found that Bodine's testimony in several instances is not worthy of belief. We do not attach greater credibility to it here. We find that Cordero's testimony accurately portrays the circumstances leading up to his reinstatement.

We are equally satisfied that the asserted ground for the delay in reinstating Cordero did not exist.

The nature of the offense with which he stood charged had no bearing on Cordero's qualifications as an employee. Such qualifications were, in effect, admitted by Bodine. There is, moreover, doubtful fortuity in Bodine's sudden abandonment of his refusal to reinstate Cordero, following the production of proof that Cordero did not actively participate in the strike. We think that Cordero correctly interpreted Bodine's remarks as calling for such proof.

Dabich, likewise, was first refused reinstatement by Bodine. The respondent has assigned no reason for such refusal. Dabich had been employed for 11½ years. Dabich subsequently saw Larson and said, "Maybe we made a mistake. How's chances to go back to work?" Larson replied that Dabich could return to work the next day. Although Larson testified several times at the hearing, he failed to deny Dabich's testimony. By making "a mistake" Dabich clearly had reference to the employees' efforts toward self-organization, and we have no doubt that Larson so understood the remark. Bodine has charge of all hiring. Larson's unexplained reversal of Bodine's refusal to reinstate Dabich, following as it did Dabich's virtual renunciation of the Union, can be interpreted in the light of the record only as evidence of a policy adopted by the respondent not to rehire employees who would continue actively to support the Union.

Our reasoning and conclusions set forth above in connection with the respondent's refusals to rein-



state the 15 strikers first named are equally applicable to the refusals to reinstate Cordero and Dabich. We find that both Cordero and Dabich were initially denied reinstatement, and that their reinstatement was delayed, because they joined and assisted the Union. We further find that Cordero and Dabich were reinstated on July 7 upon assurances to the respondent that Cordero had not been active in the strike and that Dabich was willing to capitulate to the respondent's opposition to the Union. While the evidence does not show the specific jobs which were available for Cordero and Dabich when their reinstatement was first refused, we conclude, as in the cases of the 15 strikers named above, in the absence of a showing to the contrary, that they were qualified for positions which new employees were hired to fill between June 25, the date of the written application, and July 7, the date that Cordero and Dabich were reinstated. Our conclusion in this regard is supported by the fact that Cordero and Dabich were subsequently reinstated, to jobs different from their former positions, for no other reason than that the respondent became convinced that neither employee would menace its objective to defeat the Union.

The record does not support the allegation of the complaint that Dabich was discriminated against in regard to his terms and conditions of employment.

We find that the respondent has discriminated in regard to the hire and tenure of employment of



Gregorio Cordero and Sam Dabich, thereby discouraging membership in the Union; that it thereby has interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act.

We find that the respondent has not discriminated against Sam Dabich in respect to terms and conditions of his employment.

#### IV.

#### The Effect of the Unfair Labor Practices Upon Commerce

We find that the activities of the respondent set forth in Section III B and C above, occurring in connection with the operations of the respondent described in Section I above, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States, and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

#### V.

#### The Remedy

The respondent will be required to cease and desist from its unfair labor practices specified above, and to take such action, hereinafter set forth, essential to effectuate the purposes and policy of the Act.

Thirty-six of the employees who were on strike have not been reinstated. We have found that 15

of these, named in Appendix "A," attached hereto and made a part hereof, were discriminated against in respect to their hire and tenure of employment contrary to Section 8 (3) of the Act. For this reason and, independently thereof, for the reason that the strike was prolonged by the respondent's unfair labor practices in refusing to bargain collectively with the Union, we shall, in accordance with our usual custom, order the respondent to offer them immediate reinstatement to their former or substantially equivalent positions.<sup>15</sup> In addition, for the latter reason, the respondent will be required, upon application, to offer reinstatement to the remaining 21 striking employees who have not been reinstated. The offers of reinstatement shall be without prejudice to seniority and other rights and privileges.

The reinstatement of the 36 employees shall be effected in the following manner: All new employees hired after June 15 shall, if necessary to provide employment for those to be offered reinstatement, be dismissed. If, thereupon, by reason of a reduction in force there is not sufficient employment immediately available for those to be offered reinstatement, all available positions shall be distributed among the remaining employees in accordance with the respondent's usual method of reducing its force, without discrimination against any employee because of his union affiliation or activities, following

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<sup>15</sup>Matter of Jeffery-DeWitt Insulator Company, footnote 10, *supra*.

a system of seniority to such extent as has heretofore been applied in the conduct of the respondent's business. Those employees remaining after such distribution, for whom no employment is immediately available, shall be placed upon a preferential list prepared in accordance with the principles set forth in the previous sentence, and shall thereafter, in accordance with such list, be offered employment in their former or in substantially equivalent positions, as such employment becomes available and before other persons are hired for such work.

The respondent will, in addition, be required to make whole each of the 15 employees named in Appendix "A" for any loss of pay each may have suffered by reason of the respondent's discrimination against him, less his net earnings<sup>16</sup> during the

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<sup>16</sup>By "net earnings" is meant earnings less expenses, such as for transportation, room, and board, incurred by an employee in connection with obtaining work and working elsewhere than for the respondent, which would not have been incurred but for the unlawful refusal to reinstate him and the consequent necessity of his seeking employment elsewhere. See *Matter of Crossett Lumber Company and United Brotherhood of Carpenters and Joiners of America, Lumber and Sawmill Workers, Local No. 2590*, 8 N. L. R. B., No. 51. Monies, received by an employee for work performed upon Federal, State, county, municipal, or other relief projects during the period from September 1, 1937, to the date of the offer of reinstatement, are earnings. We will order the respondent to deduct such amounts from the sums otherwise due the employees and to pay such deductions over to the appropriate fiscal



period for which said sum is computed. Since we are unable to find from the record the specific dates on which each of the 15 employees named in Appendix "A," together with Cordero and Dabich, would have been reinstated but for the discrimination, we will order that back pay be computed from September 1, 1937, the date on which substantially normal operations were resumed, until the date of the offer of reinstatement to each. Inasmuch as both Cordero and Dabich were reinstated prior to September 1, neither will be entitled to receive back pay.

Upon the basis of the above findings of fact and upon the entire record in the case, the Board makes the following:

### CONCLUSIONS OF LAW

1. Alberhill Clay Products Workers' Union No. 373 is a labor organization, within the meaning of Section 2 (5) of the Act.

2. All employees of the respondent at its Alberhill plant, including the pits, excluding foremen, supervisors, and office employees, constitute a unit appropriate for the purposes of collective bargaining, within the meaning of Section 9 (b) of the Act.

3. Alberhill Clay Products Workers' Union No.

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agency of the Federal, State, county, municipal or other government or governments which supplied the funds for the work relief project. See Matter of Republic Steel Corporation and Steel Workers Organizing Committee, 9 N. L. R. B., No. 33. See also, Matter of Western Felt Works, footnote 13, *supra*.



373 was on June 10, 1937, and at all times thereafter has been, the exclusive representative of all such employees for the purposes of collective bargaining, within the meaning of Section 9 (a) of the Act.

4. By refusing to bargain collectively with the Union on June 15, 1937, and at all times thereafter, as the exclusive representative of its employees in an appropriate unit, the respondent has engaged in and is engaging in unfair labor practices, within the meaning of Section 8 (5) of the Act.

5. By discriminating in regard to the hire and tenure of employment of William Ashworth, Henry Boontjer, Frank German, Lawrence German, James Grier, Arthur Hannum, Edward Hannum, Lester Hazleton, Chester Lucas, Lawrence McNutt, Arnold Moss, Sylvester Osborne, Thomas Roddy, Glenn Stewart, Gerald Wenker, Gregorio Cordero, and Sam Dabich, and thereby discouraging membership in the Union, the respondent has engaged in and is engaging in unfair labor practices, within the meaning of Section 8 (3) of the Act.

6. By interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act, the respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (1) of the Act.

7. The aforesaid unfair labor practices are unfair labor practices affecting commerce, within the meaning of Section 2 (6) and (7) of the Act.

8. The respondent has not discriminated, and is not discriminating in regard to terms or conditions of employment of Sam Dabich, within the meaning of Section 8 (3) of the Act.

### ORDER

Upon the basis of the above findings of fact and conclusions of law and pursuant to Section 10 (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that the respondent, Los Angeles Brick & Clay Products Co., its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Interfering with, restraining, or coercing its employees in the exercise of their rights to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, as guaranteed in Section 7 of the Act;

(b) Refusing to bargain collectively with Alberhill Clay Products Workers' Union No. 373 as the exclusive representative of its employees at the Alberhill plant, including the pits, excluding foremen, supervisors, and office employees, in respect to rates of pay, wages, hours of employment, and other conditions of employment;

(c) Discouraging membership in the Union or any other labor organization of its employees, by

discriminating in regard to hire and tenure of employment because of membership in or activity on behalf of the Union or any other labor organization.

2. Take the following affirmative action, which the Board finds will effectuate the policies of the Act;

(a) Offer to those employees listed in Appendix "A," and each of them, immediate and full reinstatement to their former or substantially equivalent positions, without prejudice to their seniority or other rights and privileges, in the manner set forth in the section entitled "Remedy" above, placing those employees for whom employment is not immediately available upon a preferential list in the manner set forth in said section, and thereafter, in said manner, offer them employment as it becomes available;

(b) Make whole the 15 employees named in Appendix "A" for any loss of pay each may have suffered by reason of the respondent's discrimination in regard to hire and tenure of employment, by payment to each of them, respectively, of a sum of money equal to the amount each normally would have earned as wages from September 1, 1937, to the date of the offer of reinstatement, less his net earnings during said period; deducting, however, from the amount otherwise due each said employee, monies received by him during said period for work performed upon Federal, State, county, municipal or other work relief projects, and pay over the amounts so deducted to the appropriate fiscal agency



of the Federal, State, county, municipal, or other government or governments which supplied the funds for said projects;

(c) Upon application, offer to those employees, who were on strike on June 15, 1937, and thereafter, and who are not named in Appendix "A," and each of them, immediate and full reinstatement to their former or substantially equivalent positions, without prejudice to their seniority and other rights and privileges, in the manner set forth in the section entitled "Remedy" above, placing those employees for whom employment is not immediately available upon a preferential list in the manner set forth in said section; and thereafter, in said manner, offer them employment as it becomes available;

(d) Make whole the employees ordered in paragraph (c) above to be offered reinstatement for any loss of pay they will have suffered by reason of the respondent's refusal to reinstate them, upon application, following the issuance of this Order, by payment to each of them, respectively, of a sum of money equal to that which each normally would have earned as wages during the period from 5 days after the date of such application for reinstatement to the date of the offer of employment or placement upon the preferential list required by paragraph (c) above, less his net earnings during said period; deducting, however, from the amount otherwise due each said employee, monies received by him during said period for work performed upon Federal, State,



county, municipal or other work relief projects, and pay over the amounts so deducted to the appropriate fiscal agency of the Federal, State, county, municipal, or other government or governments which supplied the funds for said projects;

(e) Post immediately, and keep posted for a period of at least sixty (60) consecutive days from the date of posting, notices in conspicuous places in and about the plant, including the yard and the pits, stating in both English and Spanish that the respondent will cease and desist in the manner set forth in 1 (a), (b), and (c), and that it will take the affirmative action set forth in 2 (a), (b), (c), (d), and (e), of this Order; and

(f) Notify the Regional Director for the Twenty-first Region in writing within ten (10) days from the date of this Order what steps the respondent has taken to comply herewith.

And it is further ordered that the complaint, in so far as it alleges that the respondent discriminated in regard to the terms and conditions of employment of Sam Dabich, be, and the same hereby is dismissed.

APPENDIX A

William Ashworth  
Henry Boontjer  
Frank German  
Lawrence German  
James Grier  
Arthur Hannum  
Edward Hannum  
Lester Hazleton  
Chester Lucas  
Lawrence McNutt  
Arnold Moss  
Sylvester Osborne  
Thomas Roddy  
Glenn Stewart  
Gerald Wenker

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Case No. C-584

In the Matter of

LOS ANGELES BRICK & CLAY PRODUCTS  
CO.

and

ALBERHILL CLAY PRODUCTS WORKERS'  
UNION No. 373

AFFIDAVIT AS TO SERVICE

District of Columbia, ss:

I, George Lo Verde, being first duly sworn, on oath saith that I am one of the employees of the National Labor Relations Board, in the office of

said Board in Washington, D. C.; that on the 27th day of February, 1939, I mailed postpaid, bearing Government frank, by registered mail, a copy of the Decision and Order to the following named persons, addressed to them at the following addresses:

Alberhill Clay Products Workers' Union No. 373, c/o Mr. William G. Ashworth, Acting Secretary, P. O. Box 198, Alberhill, California.

Ellis, Howlett & MacLaren, 649 South Olive St., Los Angeles, California.

International Union of Mine, Mill and Smelter Workers, 720 Colorado Building, Denver, Colo.

GEORGE LO VERDE.

Subscribed and sworn to before me this 27th day of February, 1939.

(Seal) JOHN O. NEVIN.

Notary Public, D. C.

My commission expires Aug. 15, 1943.

### RETURN RECEIPT

Received from the Postmaster the Registered or Insured Article, the original number of which appears on the face of this Card.

ELLIS, HOWLETT & MacLAREN,

(Signature or name of addressee)

M. NIDEVER.

(Signature of addressee's agent)

Date of delivery March 1, 1939.

U. S. Government Printing Office

Penalty for Private Use to Avoid Payment of  
Postage, \$300.

Postmark of Delivering Office

[Postmarked Los Angeles, Calif., March 1, 1939.]

Post Office Department

Official Business

Registered Article

No. 69960

Insured Parcel

No.....

Return to National Labor Relations Board

(Name of Sender)

Street and Number or Post Office Box.....

Washington, D. C.

### RETURN RECEIPT

Received from the Postmaster the Registered or  
Insured Article, the original number of which ap-  
pears on the face of this Card.

WM. G. ASHWORTH,

(Signature or name of addressee)

.....  
(Signature of addressee's agent)

Date of delivery March 1, 1939.

U. S. Government Printing Office

Form 3811

c 5—6116



Penalty for Private Use to Avoid Payment of  
Postage, \$300.

Postmark of Delivering Office

[Postmarked Alberhill, Calif., March 2, 1939.]

Post Office Department

Official Business

Registered Article

No. 69959

Insured Parcel

No.....

Return to National Labor Relations Board

(Name of Sender)

Street and Number, or Post Office Box, .....

Washington, D. C.

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In the United States Circuit Court of Appeals for  
the Ninth Circuit

No. 9218

October Term, 1938

NATIONAL LABOR RELATIONS BOARD,  
Petitioner,

vs.

LOS ANGELES BRICK & CLAY PRODUCTS  
CO., a Corporation,

Respondent.

PETITION FOR ENFORCEMENT OF AN  
ORDER OF THE NATIONAL LABOR  
RELATIONS BOARD

To the Honorable, the Judges of the United States  
Circuit Court of Appeals for the Ninth Circuit:

The National Labor Relations Board, pursuant to the National Labor Relations Act (Act of July 5, 1935, 49 Stat. 449, c. 372, 29 U.S.C. § 151 et seq.), respectfully petitions this Court for the enforcement of an order issued by it against respondent, Los Angeles Brick & Clay Products Co., a corporation, its officers, agents, successors, and assigns. The proceeding resulting in said order is known upon the records of the Board as "In the Matter of Los Angeles Brick & Clay Products Co. and Alberhill Clay Products Workers' Union No. 373, Case No. C-584."

In support of this petition, the Board respectfully shows:

(1) Respondent is a California corporation, engaged in business in the State of California, within this judicial circuit, where the unfair labor practices occurred. This Court therefore has jurisdiction of this petition by virtue of Section 10 (e) of the National Labor Relations Act.

(2) Upon all proceedings had in said matter before the Board, as more fully shown by the entire record thereof certified by the Board and filed with this Court herein, to which reference is hereby made, and including, without limitation, a complaint, answer, hearing for the purpose of taking testimony and receiving other evidence, trial examiner's report and exceptions filed thereto, the Board, on February 27, 1939, duly stated its findings of fact and conclusions of law and issued an order, so

much of which as relates to this proceeding being as follows:

### ORDER

Upon the basis of the above findings of fact and conclusions of law and pursuant to Section 10 (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that the respondent, Los Angeles Brick & Clay Products Co., its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Interfering with, restraining, or coercing its employees in the exercise of their rights to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, as guaranteed in Section 7 of the Act;

(b) Refusing to bargain collectively with Alberhill Clay Products Workers' Union No. 373 as the exclusive representative of its employees at the Alberhill plant, including the pits, excluding foremen, supervisors, and office employees, in respect to rates of pay, wages, hours of employment, and other conditions of employment;

(c) Discouraging membership in the Union or any other labor organization of its em-

ployees, by discriminating in regard to hire and tenure of employment because of membership in or activity on behalf of the Union or any other labor organization.

2. Take the following affirmative action, which the Board finds will effectuate the policies of the Act:

(a) Offer to those employees listed in Appendix "A," and each of them, immediate and full reinstatement to their former or substantially equivalent positions, without prejudice to their seniority or other rights and privileges, in the manner set forth in the section entitled "Remedy" above, placing those employees for whom employment is not immediately available upon a preferential list in the manner set forth in said section, and thereafter, in said manner, offer them employment as it becomes available;

(b) Make whole the 15 employees named in Appendix "A" for any loss of pay each may have suffered by reason of the respondent's discrimination in regard to hire and tenure of employment, by payment to each of them, respectively of a sum of money equal to the amount each normally would have earned as wages from September 1, 1937, to the date of the offer of reinstatement, less his net earnings during said period; deducting, however, from the amount otherwise due each said employee, moneys received by him during said period for work per-



formed upon Federal, State, county, municipal or other work relief projects, and pay over the amounts so deducted to the appropriate fiscal agency of the Federal, State, county, municipal, or other government or governments which supplied the funds for said projects;

(c) Upon application, offer to those employees, who were on strike on June 15, 1937, and thereafter, and who are not named in Appendix "A," and each of them, immediate and full reinstatement to their former or substantially equivalent positions, without prejudice to their seniority and other rights and privileges, in the manner set forth in the section entitled "Remedy" above, placing those employees for whom employment is not immediately available upon a preferential list in the manner set forth in said section; and thereafter, in said manner, offer them employment as it becomes available;

(d) Make whole the employees ordered in paragraph (c) above to be offered reinstatement for any loss of pay they will have suffered by reason of the respondent's refusal to reinstate them, upon application, following the issuance of this Order, by payment to each of them, respectively, of a sum of money equal to that which each normally would have earned as wages during the period from 5 days after the date of such application for reinstatement to the date of the offer of employment or place-

ment upon the preferential list required by paragraph (c) above, less his net earnings during said period; deducting, however, from the amount otherwise due each said employee, monies received by him during said period for work performed upon Federal, State, county, municipal or other work relief projects, and pay over the amounts so deducted to the appropriate fiscal agency of the Federal, State, county, municipal, or other government or governments which supplied the funds for said projects;

(e) Post immediately and keep posted for a period of at least sixty (60) consecutive days from the date of posting, notices in conspicuous places in and about the plant, including the yard and the pits, stating in both English and Spanish that the respondent will cease and desist in the manner set forth in 1(a), (b), and (c), and that it will take the affirmative action set forth in 2(a), (b), (c), (d), and (e), of this Order; and

(f) Notify the Regional Director for the Twenty-first Region in writing within ten (10) days from the date of this Order what steps the respondent has taken to comply herewith.

\* \* \* \* \*

## APPENDIX "A"

William Ashworth

Henry Boontjer

Frank German

Lawrence German

James Grier

Arthur Hannum

Edward Hannum

Lester Hazleton

Chester Lucas

Lawrence McNutt

Arnold Moss

Sylvester Osborne

Thomas Roddy

Glenn Stewart

Gerald Wenker

(3) On February 27, 1939, the Board's decision and order were served upon respondent by sending a copy thereof postpaid, bearing Govern-frank, by registered mail, to Ellis, Howlett & MacLaren, its attorneys, in Los Angeles, California.

(4) Pursuant to Section 10 (e) of the National Labor Relations Act, the Board is certifying and filing with this Court a transcript of the entire record in the proceedings before the Board, including the pleadings, testimony and evidence, findings of fact, conclusions of law, and order of the Board.

Wherefore, the Board prays this Honorable Court that it cause notice of the filing of this petition and

transcript to be served upon respondent and that this Court take jurisdiction of the proceeding and of the questions determined therein and make and enter upon the pleadings, testimony and evidence, and the proceedings set forth in the transcript and upon the order made thereupon, set forth in paragraph (2) hereof, a decree enforcing in whole said order of the Board and requiring respondent, its officers, agents, successors, and assigns to comply therewith.

NATIONAL LABOR RELATIONS BOARD

By ROBERT B. WATTS,

Associate General Counsel

Dated at Washington, D. C., this 21st day of June, 1939.

District of Columbia, ss:

Robert B. Watts, being first duly sworn, states that he is Associate General Counsel of the National Labor Relations Board, petitioner herein, and that he is authorized to and does make this verification in behalf of said Board; that he has read the foregoing petition and has knowledge of the contents thereof; and that the statements made therein are true to the best of his knowledge, information and belief.

ROBERT B. WATTS



Subscribed and sworn to before me this 21st day of June, 1939.

(Seal) JOHN E. LAWYER

Notary Public, District of Columbia.

My commission expires Sept. 8, 1939.

[Endorsed]: Filed June 26, 1939. Paul P. O'Brien, Clerk.

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[Title of Board and Cause.]

TESTIMONY.

Mr. Mauritsen: Mr. Examiner, at this time I should like to file in evidence the formal papers filed in this case to date, with the request that they be numbered Board's Exhibit No. 1, with the following subdivisions: [2\*]

Exhibit 1-A, the charge filed by the Union.

1-B, the amended charge filed December 5th.

1-C, the complaint and notice of hearing.

1-D, the affidavit of service of the complaint and notice of hearing.

1-E, various registered return receipts.

1-F, the affidavit of service of the subpoena duces tecum.

1-G, the amended notice of hearing.

1-H, the affidavit of service of the subpoena duces tecum upon Henry Prussing.

1-J, We will leave 1-J for the motion of the Respondent for an extension of time to answer.

Mr. Howlett: That is to be filed.

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\*Page numbering appearing at the foot of page of original certified Transcript of Record.

Trial Examiner Stephenson: Can't that be noted at this time and later be put in the file?

Mr. Mauritsen: Yes; just reserve the number and it can be filed later, and also,

1-K, the order of the Regional Examiner.

1-L, the notice of special appearance of L. A. Clay & Brick Products Company, a corporation, and a motion to dismiss complaint.

1-M, the answer.

1-N, We will leave that number for the order designating the Trial Examiner.

That is with the understanding that these additional [3] papers will be filed when they are received, as part of Exhibit 1.

Trial Examiner Stephenson: Any objection, gentlemen?

Mr. Howlett: No objection.

Trial Examiner Stephenson: If not, they will be received in evidence and marked as Board's Exhibit 1.

(Thereupon the documents above referred to were marked as Board's Exhibit 1 and received in evidence.)

Mr. Mauritsen: Now, at this time it has been agreed between counsel that the evidence regarding jurisdiction in this matter will be taken at a later date, so that we will proceed with the other parts of the complaint at this time.

Mr. Howlett: Without the waiver of the question of jurisdiction.

Trial Examiner Stephenson: All right; and the Examiner, of course, will reserve his ruling on the

motion to dismiss for want of jurisdiction until after all the jurisdictional facts are in.

Mr. Howlett: That is satisfactory. [4]

Mr. Howlett: As to paragraph 1 and paragraph 3 of the complaint, we will admit those paragraphs.

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### LAWRENCE C. McNUTT

called as a witness by and on behalf of the National Labor Relations Board, having been first duly sworn, testified as follows:

Trial Examiner Stephenson: State your name.

The Witness: Lawrence C. McNutt.

#### Direct Examination

Q. (Mr. Mr. Mauritsen) Mr. McNutt, are you now employed? A. No. [5]

Q. Have you ever been employed by the L. A. Brick & Clay Products Company? A. Yes.

Q. What time did you start to work for that Company?

A. On or about the 6th day of January, 1937.

Q. How long did you work for the L. A. Brick & Clay Products Company?

A. Until June 3rd, 1937.

Q. Are you an officer of the union?

A. I am.

Q. What is the name of the union?

A. The Alberhill Clay Products Workers Union.

Q. Mr. McNutt, will you tell us of the organization of that union; the steps leading to the organization and how it was formed?

(Testimony of Lawrence C. McNutt.)

A. The first attempt to organize the union started the night of June 1st. A meeting was held in the American Legion Hall at Elsinor by Mr. Greene from Los Angeles.

Q. And what happened at that meeting?

A. Mr. Greene told the purpose of the union and talked concerning our organizing the union, and in the end, that those that wished to come forward and sign and desired to join the union, to do so.

Q. What happened then?

A. About 45 signed up. [6]

Q. About 45 signed up?           A. Yes.

Q. That was on June 1st?

A. Right.

Trial Examiner Stephenson: Of what year?

The Witness: 1937.

Q. (By Mr. Mauritsen) 1937. When was the next meeting of the union held?

A. June 5th.

Q. Where was that meeting held?

A. In the Old Age Townsend Hall—the Townsend Old Age Hall at Elsinor.

Q. Just to digress a minute, let's go back to the first meeting. Who was present other than Mr. Greene?

A. Well, there were the workers from the Plant and the foreman of the Plant, Mr. Bodine.

Q. Any others?

A. Mr. Gantz, Mr. Mills and Mr. Baer.



(Testimony of Lawrence C. McNutt.)

Q. Mr. McNutt, you have designated these men as foremen of the plant. What position does Mr. Bodine hold? A. Mr. Bodine?

Q. Yes. A. Superintendent.

Q. Of the entire Alberhill plant?

A. Yes. [7]

Q. I think you testified also that Mr. Baer was present? A. Yes.

Q. What position does he hold in the plant?

A. I believe he is designated as the assistant superintendent.

Q. Assistant superintendent? A. Yes.

Q. You also testified that Mr. Mills was present? A. Yes.

Q. What position does he hold?

A. Pit foreman.

Q. At the Alberhill Plant?

A. At the Alberhill Plant.

Q. And Mr. Gantz?

A. Yard foreman.

Q. Yard foreman of the entire plant?

A. Yes.

Q. And in addition to these four men, there were a number of the employees of the plant present at this first meeting? A. Yes, sir.

Q. Now, the second meeting was held at what time? A. June 5th.

Q. June 5th? A. Yes.

Q. And who was present at that meeting? [8]

A. The employees of the plant and a deputy of Elsinor.

(Testimony of Lawrence C. McNutt.)

A. More of the employees signed to affiliate with the union. We put in for our charter and we elected officers.

Q. Now, at this time how many members or how many employees of the company had applied for application or had filed application for membership in the union; that is, both at that meeting and the previous meeting?

A. I don't have an exact account on that.

Q. Can you give it approximately?

A. Probably about 90, I would say.

Q. About 90? [9]

A. Yes.

Q. That is at both this meeting and the previous meeting? A. Yes.

Q. About how many do you think had applied at the first meeting? A. About 45.

Q. About 45? A. Yes.

Q. About how many applied at the second meeting?

A. Between the time of the first meeting and the second meeting an additional 45, approximately.

Q. So that at the time of the meeting of June 5th, you had a membership, or applications had been signed for about 90 men? A. Correct.

Q. What else transpired at this meeting of June 5? You said an additional number of employees applied for membership in the union?

(Discussion off the record)

Mr. Mauritsen: Will you read the question?

(Testimony of Lawrence C. McNutt.)

(The desired question was read by the reporter.)

A. They were sworn in to membership into the union, and as I said, we elected officers.

Q. What officers were elected at this meeting?

A. A president, a vice-president, secretary and treasurer, [10] and a doorman.

Q. Who was elected president of the union?

A. Edward Hannum.

Q. Who was elected vice-president?

A. Louis Juarez.

Q. Who was elected secretary and treasurer?

A. Myself.

Q. And who was elected doorman?

A. Mark Damron.

Q. Was your organization complete at that time? Did anything further remain to be done to make your organization complete?

A. We had a complete organization with a charter on its way. However, we had more employees to our organization in the following few days.

Q. In the following few days. That was the second meeting, on June 5?      A. Yes.

Q. When was the next meeting of the union held?      A. June 9th.

Q. June 9th?      A. I believe.

Q. Where was that meeting held?

A. In the pool hall at Alberhill.

Q. What business was transacted at that meeting?

(Testimony of Lawrence C. McNutt.)

A. Further employees were added to the union and took the [11] oath of affiliation. We——

Q. Pardon me for interrupting. You have already testified that prior to the meeting of June 9th you had approximate membership of 90 men?

A. Yes.

Q. At the meeting of June 9 you took additional members?           A. Yes.

Q. About what was the number of your membership at that time?           A. Approximately 100.

Q. Approximately 100?

A. Between 105 and 112. I would have to check on that to be exact.

Q. In other words, you had taken approximately 20 additional members since your meeting on June 5?           A. 15 or 20.

Q. 15 or 20 members?           A. Approximately.

Q. What was done at that meeting on June 9?

A. We presented a petition to the boys—to the men there.

Q. A petition?           A. Yes.

Q. Do you know who drew the petition?

A. Let's see. It was our president, Edward Hannum; vice-president Louis Juarez; and Mr. Lucas—— [12]

Q. It was done, in other words, by the officers of the union?

A. The officers and a few of the additional members.



Q. The officers and a few of the additional members?  
A. Yes.

Q. It was the union's act, was it not?

A. Yes, it was.

Q. Now, this petition was presented, and what was done then?

A. The petition was presented to the members of the Union, read in English and translated into Spanish, and a secret ballot was cast on its adoption.

Q. On the adoption of the petition?

A. Yes.

Q. And what was the result of that ballot?

A. A unanimous ballot to adopt the petition.

Q. All right. The petition was adopted?

A. Yes.

Q. Then what next took place?

A. We cast another secret ballot on what we should do in case we received no answer from the company regarding our first petition.

Q. Regarding the first petition. Are you referring to the petition that had just been adopted, or a previous one?

A. The one just adopted; the only one up to that time.

Q. What was the result of that?

A. A unanimous ballot cast in favor of strike.

[13]

Q. (By Mr. Mauritsen) Mr. McNutt, I hand you this paper, identified as Board's Exhibit No. 2, and ask you if that is your signature appearing at the bottom of the letter?  
A. It is.

(Testimony of Lawrence C. McNutt.)

Q. Now, you have testified—is there any objection?

Trial Examiner Stephenson: You are offering that in evidence? Mr. Mauritsen: Yes.

Trial Examiner Stephenson: It will be received in evidence and marked Board's Exhibit 2.

(Thereupon the document above referred to was marked as Board's Exhibit No. 2 and received in evidence.)

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#### BOARD'S EXHIBIT No. 2

1. The Los Angeles Brick and Clay Products Company recognize and accept as the collective bargaining agent of its employees the recently formed Union known as the Alberhill Clay Workers' Union, affiliated with the International Mine, Mill and Smelter Workers.

2. That all employees whose services were terminated since the first day of June, Nineteen Hundred Thirty-seven reasons of the reported depression in business and shortage of orders on hand to be filled, be reemployed and put to work at the Alberhill plant of the Los Angeles Brick and Clay Products Company before seven-thirty A. M. Friday, the eleventh day of June, nineteen and thirty seven, and in the existence of said depression of business and lack of orders on hand that the men shall be given equal number of hours of work each month until said depression is over; thus relieving

(Testimony of Lawrence C. McNutt.)

any man or group of men from standing the full brunt of said depression and that all overtime, consisting of time over 8 hours in any one day and 40 hours in any week be paid at the rate of one and one-half time. This article to be in effect until July 15, 1937.

The representatives and (or) the president of the Alberhill Clay Workers' Union be notified of the decision of acceptance or refusal reached by the Los Angeles Brick and Clay Products Company by twelve o'clock mid-night of Thursday the tenth day of June Nineteen hundred and Thirty-seven and in the existence of no notification by the specified hour the Union shall act upon the supposition that their requests have been denied and will not be complied with.

EDWARD E. HANNUM,

President.

LAWRENCE C. McNUTT,

Sec. and Treas.

[Endorsed]: 1/10/38. Board's Exhibit No. 2.

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Q. (By Mr. Mauritsen) That is your signature, you say, attached to the bottom of the letter?

A. Yes.

Q. You have testified that at this meeting on June 9 a petition was adopted by unanimous vote of the union?

A. Yes.

(Testimony of Lawrence C. McNutt.)

Q. Is that the petition that was discussed at that meeting?      A. Yes. [15]

Q. And was approved by a majority of the members of the union?      A. Yes.

Q. Now, what was done with that petition after it was approved at that meeting on June 9? What further action in regard to this petition was taken?

A. The following morning, on June 10, three men took one copy of this petition into the office at Alberhill, of the L. A. Brick & Clay Products, and presented it to Mr. Bodine, the superintendent.

Q. Do you know who comprised that committee?

A. Mr. Lucas, Mr. Juarez and, I believe, Mr. Art Hannum.

Q. That was delivered to Mr. Bodine in the company plant at Alberhill?      A. Yes.

Q. Was anything else done with it?

A. An exact copy was taken into Los Angeles and delivered at the L. A. Brick & Clay Company office at 1038 Mission Boulevard, Los Angeles.

Q. That was on the morning of June 10, 1937?

A. Yes.

Q. It was presented both to the Alberhill plant and to the Los Angeles plant of Respondent?

A. Yes, sir.

Q. To whom was the petition presented in the Los Angeles [16] office?

A. To one of the girls in the office, there being no one else present to accept it.



(Testimony of Lawrence C. McNutt.)

Q. Now, Mr. McNutt, did you ever receive an answer either from Mr. Bodine or from the Los Angeles office, in answer to this petition?

A. I did not.

Q. Will you please read the first paragraph of Board's Exhibit 2

A. Out loud?

Q. Please.

A. (Reading) "The Los Angeles Brick & Clay Products Company recognize and accept as the collective bargaining agent of its employees the recently formed Union known as the Alberhill Clay Workers Union, affiliated with the International Mine, Mill and Smelter Workers."

Q. I think you have already testified to it, but did you ever receive an answer to that request?

A. No.

Q. You have testified also that in the event no action was taken by the company in regard to the request, that you voted at this meeting on June 9, 1937 to go out on strike. Is that true?

A. That is true.

Q. And receiving no answer from the company, either from [17] Mr. Bodine or from the Los Angeles office, what then happened?

A. We were out on strike on the morning of June 11.

Q. 1937? A. 1937.

Q. And that was a union activity, was it not?

A. Yes.

(Testimony of Lawrence C. McNutt.)

Q. The union having voted to take such action in the event of failure to negotiate? A. Yes.

Q. Now, you have testified that this petition was delivered on June 10. What further effort did the union make to negotiate with the respondent company?

A. After we had been out on strike a few days we again sent them a letter asking them to bargain with us again.

Mr. Howlett: Just a minute. I object to that as not the best evidence. Do you have the letter?

The Witness: I believe the counsel here has it.

Mr. Mauritsen: I would like to introduce this as Board's Exhibit 3.

Trial Examiner Stephenson: Let's get the letter identified.

Mr. Mauritsen: Yes.

Trial Examiner Stephenson: Show the letter to the witness and identify the letter, then offer it in evidence.

Mr. Mauritsen: All right. [18]

Q. (By Mr. Mauritsen) Mr. McNutt, I hand you a letter, or a copy of a letter. You have testified that you sent a request, a further request to the company to negotiate? A. Yes.

Q. Is this a carbon copy of the latter which you forwarded to the respondent company?

A. It is.

Q. I hand you a return receipt showing receipt of a registered letter, which is returnable to your-

(Testimony of Lawrence C. McNutt.)

self. Is that the receipt that you received as the result of sending this letter by registered mail?

A. Yes.

Trial Examiner Stephenson: Do you desire to offer that in evidence as Board's Exhibit 3?

Mr. Mauritsen: Yes. They can be combined.

[19]

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BOARD'S EXHIBIT No. 3

June 16, 1937

Alberhill, Calif.

L. A. Brick & Clay Products Co.

1078 Mission Road

Los Angeles, Calif.

Gentlemen:

As the representatives of your employees at the Alberhill Plant No. 4, selected by your employees to bargain collectively for them we herewith request that you advise us within three days of a time and place for a meeting to negotiate an agreement.

We recognize that your plant is at present closed down but we have been advised that despite this lockout we are still your employees in fact for the purpose of collective bargaining. Please answer us by return mail setting the time and place for meeting as mentioned above so that it will not be necessary for us to file charges before the National Labor Relations Board of a violation of section eight, sub-

(Testimony of Lawrence C. McNutt.)

section five of the National Labor Relations Act.

Yours truly,

.....  
Sec. & Treas.

Twin Springs,

Corona, Calif.

Penalty for private use to avoid payment  
of Postage, \$300

Post Mark of Delivering Office

Post Office Department

Official Business

[Postmarked—Los Angeles, Calif.

June 17, 1937.]

Registered Article

No. 2103

Insured Parcel

No.....

Return to L. C. McNutt

(Name of sender)

Street and Number, or Post Office Box—Twin  
Springs, Star Rt.

Post Office at Corona, Calif.

### RETURN RECEIPT

Received from the Postmaster the Registered or  
Insured Article, the original number of which ap-  
pears on the face of this Card.

L. A. Brick & Clay Products  
(Signature or name of addressee)

Lynette G. Rutledge  
(Signature of addressee's agent)

Date of delivery 6/17/1937.



(Testimony of Lawrence C. McNutt.)

Mr. Howlett: The date of the letter is June 16; received on the 17th.

Q. (By Mr. Mauritsen) What is the date of the letter, Board's Exhibit 3?

A. June 16, 1937. [20]

Q. (By Mr. Mauritsen) What is the date given on the return receipt as the date of delivery?

A. June 17, 1937.

Q. Was that letter sent to the company's plant at Alberhill, or to the Los Angeles office? [21]

A. It was sent to the Los Angeles office.

Q. It was sent to the Los Angeles office of the L. A. Brick & Clay Products Company?

A. Yes.

Q. Did you ever receive an answer to this letter? A. No.

Q. Was this letter sent as a result of the union? I mean, was it the act of the union or of yourself?

A. It was the act of the officers of the union.

Q. The act of the officers of the union?

A. Yes.

Q. And you did not receive a reply to this letter? A. No.

Q. Did the union make any further attempt to negotiate with respondent company? A. No.

Q. Did the union officials ever meet with respondent company in Dr. Nylander's office in Los Angeles? A. Yes.

Q. What was the purpose of that meeting?

A. The general purpose was to iron out our diffi-

(Testimony of Lawrence C. McNutt.)

culty, I believe, and get a statement from both sides of their opinions for Dr. Nylander.

Trial Examiner Stephenson: For the purpose of the record, let it be shown that Dr. Nylander is the Regional Director [22] of the National Labor Relations Board, 21st Region, and his office is in the Pacific Electric Building in Los Angeles.

Mr. Mauritsen: Yes.

Q. (By Mr. Mauritsen) Who was present at that meeting?      A. Mr. Larson——

Q. Just a moment. What connection has Mr. Larson with either the union or the company?

A. He is designated, I believe, as general manager of the L. A. Brick & Clay Products Company.

Q. That is the respondent company?

A. Correct.

Q. Who else was present at that time?

A. Mr. Lucas.

Q. Mr. Lucas is in what capacity?

A. As a member of the union.

Q. As a member of the union?      A. Yes.

Q. Who else?      A. Mr. Walker.

Q. Mr. Walker is in what capacity?

A. He is a member of the union.

Q. A member of the union?

A. Mr. Juarez.

Q. In what capacity is Mr. Juarez?

A. As vice-president of the union. [23]

Q. Who else?      A. Mr. Ed. Hannum.

Q. In what capacity?

(Testimony of Lawrence C. McNutt.)

A. As president of the union.

Q. As president of the union?

A. And myself as secretary and treasurer of the union.

Q. (By Mr. Mauritsen) What was the time of this meeting? On what date was this held?

A. I don't exactly remember the date. Possibly it is in the records of the National Labor Relations Board. It was held in the afternoon, about 4:00 o'clock, I believe.

Q. Do you know approximately what date it was held? A. No, I don't.

Q. Was the strike still in progress?

A. The strike was still in progress. [24]

Q. So that it was before the 25th?

Mr. Howlett: I object to the question as leading the witness. The witness states he doesn't know when it was held.

Trial Examiner Stephenson: Objection overruled. I think he is just trying simply to refresh the witness' mind so he may be able to testify as to the approximate date.

Answer the question.

A. It was before the 25th of June, and it was after the 11th of June.

Q. What happened at that meeting?

A. Mr. Nylander discussed the problem with Mr. Larson and ourselves. The gist of the matter was that Mr. Larson didn't feel it was necessary——

Mr. Howlett: Just a minute. I am going to object

(Testimony of Lawrence C. McNutt.)

to what he felt. Make the statement that he made.

Trial Examiner Stephenson: I am going to overrule the objection at this time, and you may reserve a motion to strike after he finishes. Go ahead.

Mr. Howlett: All right.

Trial Examiner Stephenson: If possible state what was said and who said it. You don't need to state in exact words, but in substances; that Dr. Nylander said so and so and somebody else said so and so.

A. Yes. Mr. Larson made the statement that the men had been [25] laid off not because of labor organization, but because of lack of business, stating that they had had only \$17.00 worth of orders in the last 30 days. Mr. Nylander asked him, as near as I can remember, if he would bargain with us at that time at all.

Trial Examiner Stephenson: I didn't get the last of it.

A. If he would bargain with us at all.

Trial Examiner Stephenson: All right. Go ahead.

Q. What did he reply to that question?

A. That Mr. Larson would never have a union in his plant if he had to close it down for good; and also, pointing to me and one of the other boys, that those two men would never go back to work in his plant under any circumstances.

Q. Did he give any further reason, or did he give any reason for that statement?

A. He gave no direct reason.



(Testimony of Lawrence C. McNutt.)

Q. You have testified that the strike began on June 11?           A. Yes.

Q. How long did the strike continue?

A. Until 3:00 o'clock—June 25th, 1937, three p. m.

Q. I show you the following letter with the list of names attached thereto. What is that letter?

A. This is a letter mailed to the Los Angeles Brick & Clay Products Company at Alberhill on the evening of June 24. After the strike was called off, asking that the men—— [26]

Mr. Howlett: Just a minute, please. I object to your stating as to what the letter provides. It hasn't been introduced in evidence yet.

Trial Examiner Stephenson: Objection sustained.

Mr. Mauritsen: I am just desiring to identify it.

Trial Examiner Stephenson: That's all, but the witness was going a little beyond that.

Mr. Mauritsen: I wish to offer this in evidence.

Mr. MacLaren: May we see it?

Mr. Mauritsen: Yes.

Mr. Howlett: I object to it at this time on the ground that the proper foundation has not been laid. It appears not to be a carbon copy of the letter, even.

Trial Examiner Stephenson: Will you read the last two or three questions and answers, Mr. Reporter?

(The desired questions and answers were read by the reporter.)

(Testimony of Lawrence C. McNutt.)

Mr. Howlett: I would also like to move to strike that part which goes beyond the question, as to the letter.

Trial Examiner Stephenson: Motion granted. Is this a copy of the original letter?

The Witness: It is a copy of the original letter. That was the first copy, and it has a typographical error in it, and I recopied it and sent it into the office.

Trial Examiner Stephenson: Objection overruled. It [27] will be received in evidence and marked Board's Exhibit 4.

Mr. Howlett: Do you have a copy of it?

Mr. Mauritsen: No, I don't.

(Discussion off the record)

Trial Examiner Stephenson: Proceed.

Q. (By Mr. Mauritsen) Mr. McNutt, did you ever make application for reinstatement, or did you ever ask to be re-employed by the respondent company?      A. Yes.

Q. Will you tell us the occasion or occasions upon which you asked for employment?

A. On the evening of June 25, 1937, a group of us went into the office of the plant immediately after the strike signs were pulled down and asked Mr. Bodine for re-employment. He stated at that time that the old man had told him to hire approximately 90 men and no more, and he had that number and could not use us.

(Testimony of Lawrence C. McNutt.)

Q. Did you ever apply for employment after that time?

A. Yes sir, I did, on the following Monday morning.

Q. And to whom did you apply?

A. I came to the office, or to the yard before work the following Monday morning, and on advancing toward the office Mr. Bodine came out to meet me. I told him I was looking for work, and he told me I could not be used, and he would much rather I stay completely off the property. [28]

Q. You said the following Monday morning?

A. I believe.

Q. What was that date?

Mr. Howlett: The Monday following June 25th. I assume that is what he is speaking of?

The Witness: Yes, sir.

Trial Examiner Stephenson: I think that fixes the time.

Q. Did Mr. Bodine give you any reason for requesting that you remain off the company property?

A. No, I didn't ask for one.

Q. Did you make any further application for employment after that time?

A. No. I considered it impossible to do so.

Q. Now, Mr. McNutt, I have shown you this letter which has been introduced in evidence as Board's Exhibit 4. Will you please read the letter?

A. (Reading) "The accompanying list of men hereby place application for re-employment at such

(Testimony of Lawrence C. McNutt.)

a time as you find business warrants re-opening the Alberhill plant. Listed men to be taken back in order of seniority. Yours truly.”

And the list accompanying it are the union members.

Trial Examiner Stephenson: Has that been marked?

Mr. Mauritsen: I think not.

Trial Examiner Stephenson: Better let the reporter mark it. [29]

(Thereupon the document above referred to was marked as Board's Exhibit No. 4 and received in evidence.)

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BOARD'S EXHIBIT No. 4

June 24, 1937

Alberhill Clay Workers Union  
Alberhill, Calif.

L. A. Brick Co.  
Alberhill, Calif.

Gentlemen;

The accompanying list of men hereby place application for reemployment at such a time as you find business warrants re-opening the Alberhill plant. Listed men to be taken back in order of seniority.

Yours truly,

---

Sec. & Treas.



(Testimony of Lawrence C. McNutt.)

Jose Acosta Jr.—Alberhill, Calif.

Christobal Anaya—Alberhill, Calif.

Jose Arsiga—Alberhill, Calif.

Lawrence Arzate—Alberhill, Calif.

Jose Arzate—Alberhill, Calif.

Jose Aguillar—Alberhill, Calif.

Fortina Ayala—Alberhill, Calif.

W. G. Ashworth—Elsinore, Calif.

Pete Bernard Jr.—Alberhill, Calif.

Pete Bernard Sr.—Alberhill, Calif.

Charles Bland—Elsinore, Calif.

Henry Boontjer—Elsinore, Calif.

F. Burrola—Alberhill, Calif.

D. E. Cathey—Elsinore, Calif.

Alejandro Castillo—Elsinore, Calif.

Feliz Castillo—Alberhill, Calif.

H. G. Chamberlain—Elsinore, Calif.

Gregorio Cordero—Alberhill, Calif.

Jose Domingez—Alberhill, Calif.

Albert Davis—Alberhill, Calif.

Mark Damron—Alberhill, Calif.

Sam Dabich—Alberhill, Calif.

Thomas Esparza—Alberhill, Calif.

M. G. Eaglin—Elsinore, Calif.

M. J. Eaglin—Elsinore, Calif.

S. S. Fierro—Alberhill, Calif.

Kenneth Freeman—Wildomar, Calif.

O. L. Fuller—Elsinore, Calif.

G. B. George—Elsinore, Calif.

Lupe Garcia—Elsinore, Calif.

(Testimony of Lawrence C. McNutt.)

Oliver Gallatin—San Bernardino, Calif.

Jose Gomez—Alberhill, Calif.

Frank German—Elsinore, Calif.

Lawrence German—Elsinore, Calif.

J. D. Grier—Elsinore, Calif.

Antonio Guerra—Alberhill, Calif.

Lester Hazleton—Elsinore, Calif.

Claude Hansen—Elsinore, Calif.

W. T. Harman—Elsinore, Calif.

Carlos Herrera—Alberhill, Calif.

Arthur Hannum—Elsinore, Calif.

Edward Hannum—Elsinore, Calif.

Porfirio Jimenez—Alberhill, Calif.

Louie Juarez—Alberhill, Calif.

Pedro Jimenez—Alberhill, Calif.

John Johnson—Alberhill, Calif.

Francis Kelly—Elsinore, Calif.

Antonio Lemon—Alberhill, Calif.

Ysidro R. Luna—Alberhill, Calif.

Joe F. Lopez—Alberhill, Calif.

Ignacio A. Lemus—Alberhill, Calif.

John B. Lozano—Elsinore, Calif.

Santiago Lemus—Elsinore, Calif.

C. W. Lucas—Star Rt., Corona, Calif.

Lawrence C. McNutt—Star Rt., Corona, Calif.

Stanley Mayer—Elsinore, Calif.

Arnold Moss—Elsinore, Calif.

Raymond Macht—Elsinore, Calif.

Prisiliano Martinez—Alberhill, Calif.

Francisco Maldonado—Alberhill, Calif.

(Testimony of Lawrence C. McNutt.)

Angel Martinez—Alberhill, Calif.

Ray M. Mains—420 Valley, San Bernardino, Cal.

Bert Mayer—Elsinore, Calif.

Louis C. Miller—Elsinore, Calif.

Manuel Moreno—Elsinore, Calif.

Lee E. Michael—Elsinore, Calif.

Harry Mcgonical—Elsinore, Calif.

Nils Martinson—Alberhill, Calif.

R. Mendoza—Alberhill, Calif.

Ferdinand Mendoza—Elsinore, Calif.

Kenneth Norris—Alberhill, Calif.

Paul Ortega—Alberhill, Calif.

Ernest Osborn—Alberhill, Calif.

George Oyas—Alberhill, Calif.

Celedonio Oyas—Alberhill, Calif.

Sylvester Osborn—Alberhill, Calif.

Geo. E. O'Dell—Elsinore, Calif.

Alfred Oyas—Elsinore, Calif.

Aubrey Oliger—Elsinore, Calif.

Gene E. Olufson—Norco, Calif.

John Petersen—Star Rt. Corona, Calif.

Alejo Perez—Elsinore, Calif.

Claude E. Pearl—Elsinore, Calif.

Bacilio Polanco—Alberhill, Calif.

Leandro Polanco—Alberhill, Calif.

Pasqual Perez—Alberhill, Calif.

Francisco Perez—Alberhill, Calif.

Jesus Puga—Alberhill, Calif.

Juan S. Romero—Alberhill, Calif.

Sebastiano Rinetti—Alberhill, Calif.

(Testimony of Lawrence C. McNutt.)

Angelo Rinetti—Alberhill, Calif.

Joe Ruelas—Alberhill, Calif.

Ramon Rodriques—Alberhill, Calif.

Henry Ramirez—Alberhill, Calif.

Remon Rios—Alberhill, Calif.

Hasinto Rios—Alberhill, Calif.

Feliciano Rios—Alberhill, Calif.

Jesus Rios—Alberhill, Calif.

George Randy—Elsinore, Calif.

Glenn W. Reed—Elsinore, Calif.

J. L. Reves—Elsinore, Calif.

Thomas A. Roddy—Elsinore, Calif.

Crispin Salgado—Alberhill, Calif.

C. G. Stewart—Alberhill, Calif.

Ernest Sill—Elsinore, Calif.

John L. Sullivan—Elsinore, Calif.

C. Wayne Starr—Elsinore, Calif.

Mike Toly—Alberhill, Calif.

Mike Torres—Alberhill, Calif.

Lorrin E. Tharp—Elsinore, Calif.

John C. Walker—Alberhill, Calif.

Elpidio Solis—Alberhill, Calif.

Miguel Valenzula—Alberhill, Calif.

Chon Villa—Elsinore, Calif.

Matibidad Villa—Elsinore, Calif.

Gerald Wenker—Elsinore, Calif.

Charles R. Willard—Elsinore, Calif.

Winfred Uhtry—Alberhill, Calif.

[Endorsed]: 1/10/38. Board's Exhibit No. 4.



(Testimony of Lawrence C. McNutt.)

Q. Mr. McNutt, I hand you a number of cards and ask that you identify them.

A. These are the official application for membership cards to our union.

Q. You know the number of those cards?

A. There are 119 cards there, of which 118 were L. A. Brick Company employees.

Mr. Mauritsen: I desire to offer in evidence, as Board's Exhibit No. 5, these cards.

Trial Examiner Stephenson: Any objection, gentlemen?

Mr. Howlett: No objection at this time.

Trial Examiner Stephenson: They will be received in evidence and marked Board's Exhibit 5. I assume you want them introduced as one exhibit?

Mr. Mauritsen: One exhibit, yes.

(Discussion off the record)

Trial Examiner Stephenson: It will be Board's Exhibit 5.

(Thereupon the documents above referred to were marked as Board's Exhibit No. 5 and received in evidence.)

Q. (By Mr. Mauritsen) Mr. McNutt, have you examined these cards carefully?

A. Do you mean to examine them now? [30]

Q. No. I say have you? A. Yes.

Q. Are you acquainted—— A. Yes.

Q. ——with these statements and the dates of those cards? A. Yes, sir.

(Testimony of Lawrence C. McNutt.)

Q. You have testified previously that prior to the meeting, or at the time of the meeting on June 9 you had approximately 112 members. What dates do the majority of those cards bear?

A. From June 1st until June 9th. A very few—possibly 8 or 10—following that.

Q. Approximately how many of these cards had been received at the time when the petition was adopted at the meeting on June 9th?

A. Around 108 or 110; somewhere around there.

Q. Approximately how many of those cards had been signed at the time when you sent the registered letter to the company requesting that they negotiate with you?

A. All of them, I am quite certain.

Q. How many of those membership cards had been signed at the time when you met for a conference in Dr. Nylander's office?

A. Not knowing the exact date we met for that conference, I can't state whether they were all signed or whether there were a few following that.

[31]

Q. While you were employed by respondent company, did any of the foremen ever talk to you about the union?

A. Yes.

Q. On what occasion?

A. The day before I was laid off, on the 2nd day of June, Mr. Gantz came into the kiln in which I was working, and in a slack period, while our wagons were full, he made the statement that we

(Testimony of Lawrence C. McNutt.)

were damn fools to join the C.I.O.; that we should have a local union of our own.

Q. Is that the same Mr. Gantz who attended the meeting on June 1st?      A. Yes.

Q. Did he give any reason or did he make any statement clarifying that statement?

A. No, I heard none.

Q. At any other time did any of the foremen talk to you about the union?      A. No. [33]

Q. And upon what date were you laid off?

A. June 3rd, 1937.

#### Cross Examination [34]

Q. (By Mr. Howlett) Referring to Board's Exhibit 5, a number of cards. Were you present when these cards were signed?

A. Not at the signing of all of them.

Q. A portion of them?      A. Yes, sir.

Q. Who were they signed before?

A. Before members of the union.

Q. Do you mean signed by members of the union or before members of the union?

A. Before members of the union.

Q. Is there any indication on the cards, or any other record to show who these cards were signed before?      A. No, sir.

Q. Are you familiar with all the signatures on these cards?

A. No, sir, I am not familiar with the signatures of the men signing them.

(Testimony of Lawrence C. McNutt.)

Q. After these cards had been signed they were sent to you, as secretary of the union?

A. Yes, sir.

Q. So that you do not know of your own knowledge whether [36] these signatures are correct or incorrect?

A. I do not.

Q. Do you know when a person becomes a member of the union; by what action?

A. By being sworn into the union.

Q. The fact that they pay or do not pay dues, does that make any difference?

A. No, sir.

[37]

Q. You testified that the cards were signed between June 1st and June 9th. [38]

A. Yes.

Q. What is the basis for your knowledge as to those dates?

A. Those cards that were signed between June 1st and June 9th were given to me on and before the meeting of June 9th.

Q. They were all in your possession at that time?

A. All those that had been signed at that time.

Q. And these smaller slips, that are part of the same exhibit, are what?

A. They are the cards that had been paid; the dues had been paid.

Q. The dues had been paid?

A. Yes, sir.

Q. And the balance of them had not been paid?

A. Correct.



(Testimony of Lawrence C. McNutt.)

Q. Referring to Board's Exhibit 4, which is the letter which you have testified that you sent to the L. A. Brick & Clay Products Company—the letter that is dated June 24, 1937—you know the letter I am speaking of?      A. Yes, sir.

Q. Was there a meeting held prior to your writing that letter?      A. Yes, sir.

Q. Which meeting was that?

A. That was a meeting of the men on the picket line, the afternoon of June 25th. [39]

Q. June 25th?      A. Yes.

Q. When was the meeting held?

A. On the afternoon, before the strike was called off, June 25.

Q. It was held on June 25?      A. Right.

Q. Was there any authorization at that meeting for you to send this letter?      A. Yes, sir.

Q. There was?      A. Yes, sir.

Q. This letter is dated June 24, the day previous to that meeting.

A. Yes. As I stated before, that letter was really copied, because of the typographical error.

Q. What was that typographical error?

A. The date.

Q. You wrote the letter in advance and took it out at the meeting, is that it?      A. Yes, sir.

Q. Was there a vote taken at that meeting?

A. Yes, sir.

(Testimony of Lawrence C. McNutt.)

Q. Was that a secret ballot? A. No, sir.

[40]

Q. What kind of a vote was it?

A. It was a hand vote.

Q. How many persons were present at that time?

A. I don't have a total count.

Q. You know whether these men on this list (Indicating) were present?

A. They were not all present.

Q. You have no idea of the men present that took that vote? A. No, sir.

Q. Would you say 5, or 10, or 150?

A. I know there wasn't 150, but I don't know exactly the number.

Q. Where was that meeting held?

A. On the picket line.

Q. Just what proceeding did you go through to hold the meeting on the picket line? Did they stand around or did you call them into groups, or what did you do?

A. They were called into a group and the president asked that we hold a meeting of those present and decide on whether this letter should be presented to the company or not.

Q. Who had charge of that meeting?

A. President Ed. Hannum.

Q. And you were present during all that time?

A. Yes, sir.

(Testimony of Lawrence C. McNutt.)

Q. What was said at that meeting by Mr. Hannum? [41]

A. He called the meeting to order and stated that due to the fact that so many of the men had been forced to go back to work it looked like a hopeless situation at the time and it would be well to call the strike off if they so considered it so, and the vote was cast and the strike was called off. The letter was presented—the vote was taken on the presentation of the letter to the company, and I proceeded with it.

Q. Did you mail this letter yourself?

A. I did.

Q. Where?

A. At the Alberhill post office.

Q. On Board's Exhibit 3, the letter dated June 16, 1937, which also has a return receipt, United States Registered Mail; are you familiar with the letter I am now referring to?

A. That is the second one sent into the company, is it not?

Q. Yes.           A. Yes.

Q. Did you sign this letter?           A. Yes, sir.

Q. Was there a meeting held prior to the time this letter was written?           A. Yes, sir.

Q. Where was that meeting held?

A. In the pool hall in Alberhill.

Q. Who was present at that time beside yourself? [42]

(Testimony of Lawrence C. McNutt.)

A. I believe all the officers of the union and several—I don't know the exact number—of members of the union.

Q. And how many of those would you say were there?

A. That is difficult to determine. I have no roll call.

Q. Did you normally keep records of meetings and the number of people who were there present?

A. No, sir.

Q. You kept no records of that character?

A. I had no records of that character.

Q. Was there an advance notice of this meeting?

A. Yes, sir.

Q. Was that in writing?                   A. No, sir.

Q. Was that matter discussed at that meeting?

A. Yes, sir.

Q. Did it come to a vote?               A. Yes, sir.

Q. By the officers or by the members?

A. By the officers.

Q. The members did not vote?

A. I don't remember the members taking a vote on that. I could not swear to that.

Q. Then after that meeting you mailed this letter to L. A. Brick & Clay Products Company, 1078 Mission Road, Los Angeles, California? [43]

A. Correct.



(Testimony of Lawrence C. McNutt.)

Q. Now, you state that on June 1st, 1937, that your union was started by Mr. Greene of Los Angeles, is that correct? A. Correct.

Q. And that the first meeting was held on that date? A. Yes, sir.

Q. Was there any notification sent to the employees, or how were they called to the meeting?

A. By pamphlet in the brick yard at Alberhill.

Q. And how many employees of the Alberhill plant were there at that time?

A. I did not take a count. [44]

Q. You did not take a count?

A. No. I had no reason to.

Q. Then the second meeting was held four days later on June 5th, is that correct?

A. Yes, sir. [45]

Q. How long have you worked for the L. A. Brick & Clay Products Company?

A. Since the first part of January, 1937 until June 3, 1937.

Q. That was along about the 3rd or 5th, the early part of January?

A. I would have to check back on my cards to see. I don't know the exact date.

Q. What were your duties there?

A. Kiln worker. Drawer.

Q. What does that work consist of?

A. It consists of unloading the tile brick that are in kilns, after being done, and loading them into

(Testimony of Lawrence C. McNutt.)

wagons in which they are transported to the yard.

Q. Have you ever worked in a similar work before, in any other company? [48]

A. No, sir.

Q. What is your home address?

A. Twin Springs, Corona, California.

Q. Is that a small town?

A. No, sir. That is a service station on the road between Elsinor and Corona.

Q. You live there at the present time?

A. Yes, sir.

Q. What means of support have you?

A. I am assisting my father and he is good enough to help us out.

Q. You work in the service station part of the time?

A. Yes. I work around there. I thought of that afterwards. I didn't think of it as a job before, but reconsidering it, possibly it would be considered as a job. We get our board and room there.

Q. Who else?

A. My wife and two children. [49]

Q. You stated that Mr. Bodine, Mr. Gantz, Mr. Baer, and the Pit Foreman—what is his name?

A. Mills.

Q. —and Mr. Mills was present.

A. Yes.

Q. Where was that meeting held?

A. In the American Legion Hall at Elsinor.

Q. At Elsinor?

A. Yes, sir.

(Testimony of Lawrence C. McNutt.)

Q. Did you have notice of that prior to the meeting?

A. The organizer had put out notices.

Q. Did you talk to any of these men at the time of that meeting?

A. No, sir. Not until after the meeting. [50]

Q. You did talk to them after the meeting?

A. We discussed the things there after the meeting, of course.

Q. Did they participate in the discussion?

A. Who do you mean by they?

Q. I mean these men I have just named?

A. I don't know what they had to say at the meeting. I did not talk with them.

Q. Did they participate during the meeting?

A. No, sir. [51]

Q. Then we come down to the third meeting; that was on or about June 9, 1937. Prior to the meeting of June 9, do you know the number of men that had signed cards in your union?

A. What is the date?

Q. Prior to June 9?

A. I haven't knowledge of the exact number. I can very well check it.

Q. That is represented by these cards right here (indicating)?

A. Yes, sir.

Q. On the date of June 9 you called the third meeting. Where was that held?

A. We called the third meeting.

Q. Where did you have your third meeting?

(Testimony of Lawrence C. McNutt.)

A. We had a third meeting on June 9.

Q. Yes. Where was that held?

A. That was held in the pool hall at Alberhill.

Q. And some additional men joined the union at that time?

A. Yes, sir.

Q. Do you know how many?

A. No, sir.

Q. Do you have a record?

A. It would be those that were dated between June 5th and June 9th, on the cards.

Q. I see. And at that meeting you stated that you presented [52] a petition, referred to as Board's Exhibit 2. Do you know the letter that I refer to?

A. If that is the petition.

Q. Yes.

A. Yes, I know the letter.

Q. During any of the times we have been talking about, and [53] during the time you have been a member of the union and during the time you have been employed at the company, was there any discussion as to rates of pay *between or* your union and the L. A. Brick & Clay Products Company?

A. Not until that petition was presented. Not after that.

Q. I am speaking about rates of pay?

A. No. We did not discuss it. Not the union and the company.

Q. Never was it discussed about rates of pay?

A. Not to my knowledge.

Q. You were apparently then satisfied with the rates of pay you were receiving?



(Testimony of Lawrence C. McNutt.)

A. No.

Q. But you didn't say anything about?

A. No. [54]

A. Well, considering the plant at Alberhill, three men took it in and presented it to Mr. Bodine, and another copy was presented in the Los Angeles office in the same manner.

Q. When was that presented at the Alberhill plant? A. When?

Q. What time of day?

A. Before 7:30 in the morning. The 10th, I believe.

Q. To whom was it presented?

A. Mr. Bodine.

Q. And were you one of the three that presented it? A. No, sir.

Q. You were not one of the three?

A. No, sir.

Q. Had you prior to this time ever notified them of the request that you made in this petition?

A. No, sir.

Q. Was there any discussion in your meeting as to the fact that unless this was acted upon by 12:00 o'clock midnight on the 10th—was the fact that the letter was not delivered [55] until the 10th discussed in your meeting? A. No, sir.

Q. In other words, this matter had not been considered in the way of any discussion between yourself as to the shortness of the notice between the time of its presentation and the strike was called?

(Testimony of Lawrence C. McNutt.)

A. I don't remember the exact things that were carried on there, but there might possibly have been something said about the shortness of the period for sending that in; but if it was, and there probably was, the matter would have been brought up, and the delay was—we were being fired as fast as we joined it and to delay longer would just have been worse.

Q. That was your opinion, of course?

A. Yes.

Q. You are not familiar with the production records or the sales records of the company?

A. I have no office connection there.

Q. And you did not receive an answer to your letter by 12:00 o'clock midnight of the 10th?

A. No, sir.

Q. And as a result the strike was called the following morning?

A. Yes, sir.

Q. At what time? [56]

A. 7:30.

Q. 7:30?

A. I think that is the correct time.

Q. Was this vote taken by a ballot?

A. Yes, sir.

Q. What type of a ballot?

A. Secret ballot; a slip of paper.

Mr. Mauritsen: I will object to that, Mr. Examiner. He hasn't said what ballot he is referring to.

(Testimony of Lawrence C. McNutt.)

Mr. Howlett: I am still talking about the same letter.

Trial Examiner Stephenson: You understood the questions?

The Witness: He refers to this paper that we presented the company?

Trial Examiner Stephenson: Yes.

Mr. Howlett: That is correct.

The Witness: That's right.

Q. (By Mr. Howlett) How many ballots were cast at that time?

A. 50, I believe, or thereabouts.

Q. Are those ballots kept after they are cast?

A. No, sir.

Q. Are they recorded in any book that you have? A. Yes, sir.

Q. What is the name of that book? What do you call it?

A. I am not secretary enough to be acquainted with the [57] terms.

Q. I am trying to find out what book it is.

Do you have a book that you keep all these things in?

A. I didn't have a set of books at that time, and I jotted it down on a slip of paper.

Q. Is that kept in a loose-leaf file?

A. Yes.

Q. Are all your meetings kept that way?

(Testimony of Lawrence C. McNutt.)

A. They were up until the time I received my books, which was later on.

Q. So you don't have a record of that ballot, except——

A. Except that it was the unanimous ballot of all present.

Q. Do you know who was present at that meeting?

A. The officers——

Q. I will withdraw that.

Those present were employees of the L. A. Brick & Clay?

A. Yes.

Q. Now, going back to Board's Exhibit 3, which was sent by registered mail to the L. A. Brick Company——I will leave off the balance of the name.

Trial Examiner Stephenson: It will be understood that when you refer to the L. A. Brick Company, that it is the Respondent?

Mr. Howlett: Yes.

Mr. Mauritsen: And also the union. [58]

Trial Examiner Stephenson: And the union. Whenever we refer to "the union" it is the Alberhill Clay Products Workers Union No. 373.

Mr. Howlett: All right.

Q. (By Mr. Howlett) After this letter was sent in, which I referred to as Board's Exhibit 3, so that you may know what I am talking about.

A. Yes, I know the letter.

Q. No further attempt was made on your behalf to discuss the matter with your employer?



(Testimony of Lawrence C. McNutt.)

A. No.

Q. Then after that, and at a date which we haven't been able to determine, you went to Dr. Nylander's office in Los Angeles in connection with your affairs?

A. I can't say that we did after that. I believe it was before that.

Q. Prior to that time?

A. I can't say.

Q. Who were the parties present at that time?

A. Mr. Larson, Mr. Nylander, Mr. Lucas, Mr. Juarez——

Q. Mr. Walker?

A. Mr. Ed. Hannum, Mr. Walker and myself, as I remember it. [59]

Q. Did you find at that time that the representatives of the L. A. Brick Company were also there?

A. Mr. Larson was there preceding us.

Q. Were there any others present beside the ones you have named?

A. Mr. Sugar from the C. I. O. may have been there. I remember now. He was there for the latter part.

Q. Mr. who?

A. Mr. Sugar from the C. I. O. Headquarters, for the latter part of the conference.

Q. Where was this conference held, if you did hold a conference?

A. In Mr. Nylander's office in Los Angeles.

(Testimony of Lawrence C. McNutt.)

Q. (By Mr. Howlett) Had you received a notice from the National Labor Relations Board prior to that time to be present at that meeting?

A. Yes, sir.

Q. And what was the purpose of the discussion?

A. To discuss our difficulties with Mr. Larson.

[60]

Mr. Mauritsen: I object to that. How would the witness know what the purpose was?

Trial Examiner Stephenson: Objection sustained.

Q. (By Mr. Howlett) What was said by Dr. Nylander when you went into the office as to what he wished to do? Did he ask any questions?

A. I can't remember what Dr. Nylander said himself.

Q. Was there any discussion about the strike and how it was caused and what was going on out there?

A. There was a general discussion of the strike. Whether it was brought up about why it was caused, I don't know. I believe there was something introduced about the violation of the Labor Act concerning it.

Q. Who was the spokesman in behalf of the union at that time?

A. I think I spoke, mostly myself.

Q. Was there any discussion of the fact that you were not asking anything about wages or working conditions, other than the fact that you wanted

(Testimony of Lawrence C. McNutt.)

the work distributed so that each man would have an equal amount of work?

A. Yes, sir, there was.

Q. There was some discussion on that?

A. Yes, sir.

Q. And what did you say about that?

A. I think we brought up the subject of our first offer to the company, of the 10th, and we asked if that was an [61] unreasonable request, that the work be distributed among the men and time and a half for anything over 40 hours, I believe it was.

Q. Were you there during all the time Dr. Nylander and Mr. Larson were present? Did you go out together?

A. Dr. Nylander and Mr. Larson were there before I came.

Q. Were they there after you left?

A. I believe we left together.

Q. Was any statement made by any of you as to the particular request that you made about distributing the work so that all the boys would have the same amount of time?

A. We thought it a fair and reasonable demand, and I think we discussed it as such, but that was the end of it.

Q. Was there any ruling made at that time by Dr. Nylander as to whether that was reasonable or just?

A. No ruling that I know of.

(Testimony of Lawrence C. McNutt.)

Q. Didn't you know at the conclusion of the meeting that the matter would be dropped or that they would go further with the matter?

A. I believe Dr. Nylander made the statement that we weren't getting anywhere by trying to discuss it with Mr. Larson, so just as well drop it for the time being. Something to that effect.

Q. Was there any statement made that your request was unfair, and by so doing you were attempting to run the business? [62]

A. Yes, sir.

Q. Did you state at that time that if they had the union label on the product it could sell itself and you could go out and sell more than they could make?

A. I made the statement that a union label would undoubtedly further the sales of the product, and anybody could go out and sell over \$17.00 worth of business in that time.

Q. At that time was there any statement by the Board that the request you made was unfair and you couldn't expect to have them grant it?

A. About what request I made?

Q. About the distribution of the work?

A. No.

Q. You heard no conversation to that effect?

A. No.

Q. After that meeting adjourned were you satisfied that the matters had been or had not been adjusted?



(Testimony of Lawrence C. McNutt.)

A. That they had not been adjusted.

Q. And shortly thereafter the strike was called, is that right? A. No, sir.

Q. The strike was called before that?

A. Yes.

Q. And that is why you came up there?

A. Yes, sir. [63]

Q. This was an informal proceeding you had before the Board?

A. Informal, yes.

Q. In other words, did your union make a request for the hearing? Did they file a complaint?

A. I think not.

Q. Was there any complaint filed?

A. Yes, sir; a complaint was filed with Dr. Nylander.

Q. When was that complaint filed?

A. I don't remember the exact date.

(Discussion off the record.)

Q. Your complaint at that time was about some employees that had been laid off on or about June 2nd, 1937? A. Right.

Q. Is that correct? That is according to this charge here. A. That is correct.

Q. I will show you this so that you may know what I am talking about. A. Yes, sir.

Q. And that is the matter you went up to discuss, other than the matter that I have been speaking about, about the distribution of work?

(Testimony of Lawrence C. McNutt.)

A. Yes, sir.

Q. That was also discussed?

A. I believe that was discussed, too. To re-employ the men and distribute the work among them. [64]

Q. That is the total number of men that had been employed prior to the lay-off?

A. Yes, sir.

Q. So that whatever the work was, it would all be divided equally? A. Yes, sir.

Q. Did you discuss with Mr. Larson at that time the practicability of doing such a thing, from an operating standpoint?

A. He did not bring that up at all. [65]

Q. I am not trying to establish the names of your union members. I am trying to establish that there are a number of your union men now working at the Brick Company? A. Yes.

Q. That is a fact? A. Yes.

Q. A number of these men went out on strike at the time you had your difficulty?

A. Yes.

Q. And have since been re-employed?

A. Yes, sir. [68]

#### Redirect Examination

Q. (By Mr. Mauritsen) Mr. McNutt, while you were working for the company, did you receive any increases in pay? A. Yes, sir.

(Testimony of Lawrence C. McNutt.)

Q. Could you tell the Examiner what increases you received?

A. I started working at 40 cents an hour, and at the end of——now, I don't remember whether it was 30 days or 60 days that I received a 5 cent raise to 45 cents an hour. That is the customary thing there. I have forgotten just the period of time that elapsed. On June 1st I received a raise of 2½ cents an hour——

Mr. Howlett: June 1st?

The Witness: June 1st.

Q. (By Mr. Mauritsen) 1937?

A. 1937.

Q. How were you notified of the first raise you received, to 45 cents an hour? [69]

A. At the time I was employed by the company they told me that at the end of this period of time, a month or two months, I have forgotten now which it was, that my pay would automatically be increased to 45 cents if they found my work satisfactory.

Q. How were you advised of the increase that you received on June 1st?

A. By a bulletin that was posted on the bulletin board in the office at Alberhill; a general raise of 2½ cents for each man.

Q. About on what date was that bulletin posted?

A. Well, it was a few days before the first of June. I don't know now what date it was.

(Testimony of Lawrence C. McNutt.)

Q. Had you ever received any complaints concerning your work while you were engaged by the respondent company?

A. No direct complaint of my work itself. One complaint from Mr. Larson for breaking tile out of the kiln. It was cracked and we had orders to do that if it was cracked; and Mr. Larson didn't like the order and had it changed. But other than that there was never any complaint of my work.

Q. In other words, the only time you received a complaint of your work was from Mr. Larson, and the matter about which he had complained had been the result of an order from somebody else?

A. Yes, sir. [70]

Q. So that, as far as you know, your work with the company was satisfactory?

A. Yes. I might add to that: The evening I was laid off I asked our foreman, Mr. Gantz, if my work had fallen down and as a result of it I had been laid off. He said that had nothing to do with it—that didn't have anything to do with it. I worked directly under him.

Q. What was the date of your lay-off?

A. June 3rd.

Q. What was the date on which you joined the Union?

A. June 1st.

Q. At the meeting on June 1st?

A. Yes. [71]



(Testimony of Lawrence C. McNutt.)

Recross Examination

Q. (By Mr. Howlett) How many are there in your crew?

A. There were four in the kiln and five, generally, in the yard, including the truck driver.

Q. And they work as a unit?

A. Yes, as a crew. [73]

Q. (By Mr. Gately) Did the job you hold require any particular skill?

A. Anybody that had nimble fingers and a willing back could do it.

Q. Anybody that was there a few weeks could do it just as good as a man that had been there for 20 years?

A. He should be, or he shouldn't be there. [75]

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EDWARD E. HANNUM,

called as a witness by and on behalf of the National Labor Relations Board, having been first duly sworn, testified as follows:

Trial Examiner Stephenson: State your name, please.

The Witness: Edward E. Hannum.

Direct Examination

Q. (By Mr. Mauritsen) Mr. Hannum, are you now employed?      A. I am not.

(Testimony of Edward E. Hannum.)

Q. Have you ever at any time worked for the respondent company?      A. Yes, sir.

Q. When did you start to work?

A. I don't remember the exact date now, but it was approximately—I worked for them approximately two years.

Q. That is until what time?

A. Until June 7.

Q. 1937?

A. 1937. Approximately two years. I don't know just exactly the dates.

Q. Of what did your work consist while you worked for Respondent?

A. I started in as just a general laborer. Then I was put with a sewer pipe drawing gang; also worked helping in the [77] tile and brick drawing gang. I worked as a tractor driver; and at the end I was working on the dry press.

Q. On the dry press?

A. Dry press.

Q. What was your wage when you started with the company?

A. I think it was 37½ cents.

Q. Did you receive any raises in pay while you were working for Respondent?

A. Yes, sir. I received an increase to 40 cents, then to 45 cents, then a blanket raise to 47½ cents.

Q. That was this general raise on June 1st?

A. Yes, sir.

(Testimony of Edward E. Hannum.)

Q. So that at the time when you were last employed for Respondent you received 47½ cents an hour? A. Yes, sir.

Q. Did you ever receive any complaint regarding your work?

A. No, sir. In fact, I was very highly recommended as a workman by Mr. Bodine, and at the time I was laid off I also got a letter of recommendation recommending me to any future employer—

Mr. Howlett: Just a minute. If that letter is available it will be the best evidence of what it contains.

The Witness: I was going to bring it to you this morning, but I forgot. I can bring it to you tomorrow morning.

Mr. Howlett: I think we had better have it.

[78]

Trial Examiner Stephenson: The letter is the best evidence.

The Witness: I will bring it tomorrow morning.

Mr. Howlett: I move to strike that portion about what was in the letter.

Trial Examiner Stephenson: It may be stricken.

Q. (By Mr. Mauritsen) Then you had received no complaint regarding your work?

A. No, sir.

Trial Examiner Stephenson: That is, that portion of his answer stating what the letter contained will be stricken. The fact that the letter was received by him will not be stricken.

(Testimony of Edward E. Hannum.)

Q. (By Mr. Mauritsen) What was the first meeting of the union that you attended?

A. The meeting of June 1st, 1937.

Q. Who was present at that meeting?

A. Well, there was quite a few of the employees of the L. A. Brick Company, and Mr. Arthur Bodine; Jack Baer, and Mr. Mills.

Q. Did you sign an application card to join the Union at that meeting? A. Yes, sir.

Q. You knew approximately the number of employees of Respondent who signed application cards at that meeting? [79]

A. I should say it was in the vicinity of 45; I am not just sure.

Q. It might have been 40 or it might have been 50? A. Yes, sir. [80]

Q. (By Mr. Mauritsen) Now, were you present at the union meeting held June 5, 1937?

A. Yes, sir.

Q. Can you tell us what took place at that meeting in regard to yourself?

A. I was elected president of the local. [81]

Q. On what date were laid off by Respondent company? A. June 7, 1937.

Q. You were elected president of the union on June 5th? A. Yes, sir.

Q. At the meeting of June 5th?

A. Yes, sir.

Q. And you were laid off on June 7th?



(Testimony of Edward E. Hannum.)

A. Yes, sir.

Q. Were you present at the union meeting on June 9?      A. Yes, sir.

Q. Will you tell the Examiner what happened at that meeting?

A. Well, we took in more members. More members signed their cards. [82]

Q. Was that the first business taken up?

A. I think it was. That was usually the first thing we done, was get all the new members that we could. That was what we were working toward.

Q. Then what was the next business that was taken up?

A. We drafted a letter to the **L. A. Brick of our** demands.

Trial Examiner Stephenson: You refer to what particular letter there?

Mr. Mauritsen: I think we have that as Board's Exhibit 2.

Trial Examiner Stephenson: Board's Exhibit 2?

Mr. Mauritsen: Yes.

Q. (By Mr. Mauritsen) I hand you Board's Exhibit 2 and ask you if that is the meeting to which you are now referring?      A. Yes, sir.

Q. Did you conduct the meeting?

A. Yes, sir.

Q. Is that customary for the president of the Union?      A. Yes, sir.

(Testimony of Edward E. Hannum.)

Q. At what time did the workers go out on strike? What date?

A. The date was June 11, 1937.

Q. And what did you do after the workers or while the workers were out on strike?

A. Well, as president of the local, I was designated to [83] take charge of the picket line, see that everything was run in an orderly manner, and to be present on the picket line all the time that I could and divide my strikers into shifts so that no one man or no group of men would have to stand all the duty. [84]

Q. (By Mr. Mauritsen) Mr. Hannum, you have testified that the union delivered this petition, which they adopted at the meeting of June 9th, to the company? A. Yes, sir.

Q. Did the company ever respond to that request, to you, as president of the union?

A. No, sir.

Q. Did they respond to you in any other capacity? A. No, sir.

Q. What meetings of the union did you attend after the meeting held June 9th?

A. I attended all meetings. As to the exact dates, it has [88] been so long ago now since we had those meetings, and I never looked the papers over since then to refresh my memory on the dates of these meetings.

(Discussion off the record.)

(Testimony of Edward E. Hannum.)

Q. I hand you Board's Exhibit 3. Were you present at the meeting at which that letter—or the sending of that letter was authorized?

A. Yes, sir.

Q. Did you, as president of the union, ever receive any reply to that letter? A. No, sir.

Q. Were you present at the meeting, at the conference which was held in Los Angeles, at which were present Dr. Nylander and Mr. Larson?

A. Yes, sir.

Q. At that conference what discussion took place between you and Mr. Larson, the Respondent's superintendent?

A. Well, Mr. Larson made a remark—he wanted to know if we thought we could run his business for him; if we thought we knew how to run his business; and I told Mr. Larson that we weren't trying to run his business; that we were just merely trying to get together as a collective bargaining agent. I said there wasn't a one of us at that plant that had the ability or even thought we had the ability to even begin to run his business.

[89]

Q. Did he offer to negotiate with you or with the union at that meeting? A. No, sir.

Q. During all the time that you have been president of the union, have you been successful in getting the company to negotiate with you?

A. No, sir.

(Testimony of Edward E. Hannum.)

Q. What date were you laid off?

A. June 7th, 1937.

Q. And on what date were you elected president of the union?

A. June 5th.

Q. 1937?

A. 1937.

Q. On what date was the strike called off?

A. June 25th, 1937.

Q. Have you ever applied for reinstatement?

A. Yes, sir.

Q. What was the first occasion upon which you applied for reinstatement?

A. It was the evening of June 25th, 1937.

Q. And what happened at that time?

A. I asked Mr. Bodine if there would be any chance of going back to work and he told me, no. I don't remember his exact words, but they were to the effect that they weren't needing any more men then. [90]

Q. Did you ever apply for work after that time?

A. Once.

Q. Upon what date was that?

A. I don't remember. It was later on. Probably a week or a week and a half. Something like that.

Q. You first applied on June 25th, so that a week or so later would be around the 2nd of July?

A. Approximately around there. I don't remember the exact date.

Q. And to whom did you apply?



(Testimony of Edward E. Hannum.)

A. Mr. Bodine.

Q. And what was his answer at that time?

A. That he was sorry, but they just didn't need me, or words to that effect. I don't remember his exact words.

Q. Now, Mr. Hannum, I hand you Board's Exhibit 4 and ask you if your name appears upon the list attached to that exhibit? A. Yes, sir.

Trial Examiner Stephenson: May I see that for just a minute, please?

Mr. Mauritsen: Yes.

(Mr. Mauritsen hands document to the Trial Examiner.)

Q. Mr. Mauritsen: Do you know of your own knowledge whether there has been any lay-offs at Respondent's plant prior to the lay-offs which occurred commencing June 2nd? [91]

Mr. Howlett: I object to that as not being definite enough. Coming within the reasonable period of what time?

Mr. Mauritsen: Within two years.

A. There hasn't been such a lay-off as this, no, sir.

Q. Had there been any lay-offs involving a considerable number of persons?

A. No, sir, not that I remember of.

Q. Did you receive the general raise that was given June 1st, 1937? A. Yes, sir.

(Testimony of Edward E. Hannum.)

Q. What was your pay at that time? At what rate were you paid? A. 47½ cents.

Q. If the Board should issue an order, ordering Respondent to reinstate you, would you be willing to go back to work at this time?

A. Yes, sir.

Cross Examination

Q. (By Mr. Howlett) Mr. Hannum, are you acquainted with [92] most of the people working in the plant or that worked in the plant at the time you worked there? A. Yes, sir.

Q. In other words, you are pretty generally acquainted with the men that worked there by name and by sight, and so forth?

A. With the biggest share of them. There is lots of them——some of the Mexican boys that I didn't know, but pretty near all of them.

Q. Have you seen a number of them since that time either there or around the factory, or elsewhere?

A. I have seen several of them, yes, sir.

Q. You have had conversations with them about whether they were working or whether they weren't working?

A. Some of them, yes, sir.

Q. Isn't a fact that quite a number of those men that were laid off are back to work at the same plant? A. Yes, sir.

(Testimony of Edward E. Hannum.)

Q. Do you know how many of the men that were laid off, at the time you testified as being a large lay-off, how many of those men returned to work?

A. I don't know.

Q. But you do know that quite a number of them did? A. Yes, sir.

Q. And quite a number of those men that returned to work are union men, isn't that a fact? [93]

A. Yes, sir.

Q. And do you know that some of the officers of the union still work there?

A. Yes, sir. [94]

Q. (By Mr. Howlett) Did you ever tell your employer that you joined the union?

A. I didn't have to.

Q. I didn't ask you that.

A. No, sir.

Q. (By Mr. Howlett) Do you recall the date on which you attended a meeting at Dr. Nylander's office? There is no one else who remembers that. Do you know it?

A. No, sir, I don't remember the date. I was there, but as far as the date goes, I don't know.

(Discussion off the record.)

Trial Examiner Stephenson: All right. Let's go ahead.

Q. (By Mr. Howlett) You stated that Mr. Larson was there, and who else besides yourself?

(Testimony of Edward E. Hannum.)

A. Let's see. There was Lawrence McNutt, and there was——

Q. Well, in other words they were the same people testified to by Mr. McNutt this morning?

A. Yes, sir.

Q. That was held in the afternoon or morning of that day?      A. Afternoon.

Q. And in the office of Dr. Nylander's private office? [97]      A. Yes, sir.

Q. Did you receive a notice to come there?

A. No. The way it seems to me now——the way I recall it, we had come in to see Dr. Nylander and talk over with him the situation out there; being that he was Regional Labor Director we wanted to find out——we didn't know whether we were right or wrong or indifferent, and we just wanted to find out where we stood and one thing and another like that. During our conversation with him in the morning he said he would try to get Mr. Larson up to his office and see if we couldn't hold a little discussion up there. As I understood it, he called Mr. Larson up and then he told us that Mr. Larson would be there around 4:00 or 4:30 in the afternoon——that is the way I recall it——and for us to return to his office then.

Q. And you did?      A. Yes.

Q. The whole group returned at that time, or substantially so?

A. With one exception.



(Testimony of Edward E. Hannum.)

Q. Yes.

A. In the morning when we were at Dr. Nylander's office there was one other fellow—this William Ashworth was with us in the morning, and then we returned to Alberhill and he stayed at Alberhill; and I think Mr. Walker was the one that replaced Ashworth at that meeting. [98]

Q. Who was the spokesman for your group at that time?

A. I don't know as we had any special spokesman. There wasn't anybody designated.

Q. Well, did you ask some questions?

A. I don't remember as I asked any.

Q. Well, what did you talk about up there?

A. I can't remember that. From my recollection I can't remember that there was an awful lot of anything said. Any of us couldn't seem to get started or come together.

Q. Didn't the doctor ask you, "What is your difficulty? What are you doing? What is being done and what is this all about?"

Did he ask you something like that?

A. I don't remember what was said. I wouldn't want to go into it.

Q. You got nothing out of that meeting at all? You don't recall of accomplishing anything and you don't remember anything that was said there?

A. We never accomplished a thing. [99]

Q. So it wasn't a very satisfactory conference?

(Testimony of Edward E. Hannum.)

A. No, it wasn't satisfactory at all. It has been so long that I don't remember the conversation.

[100]

You say you applied for work since you left. You were not taken back? A. No, sir.

Q. And there was no reason given?

A. Outside that they just didn't need me. [101]

A. Since the strike I have worked very little. Just odd jobs around. I haven't had very much.

Q. Are you married? A. Yes, sir.

Q. Any children? A. Yes, sir.

Q. Where do you receive your support?

A. Well, for a while I was on relief, then I got a job and I quit the relief. I took this job and that didn't last very long. It was just a matter of a week or so, and I got back on relief again. And I got a promise of another job and I took it, and that didn't last; just a short time, and then I went back on relief the second time. And I was on relief for a while, then I got word of another job in San Diego that was supposed to last a year, so I quit relief right now, on one day's time, to go to San Diego to take this job, and instead of a year it played out—I think altogether I was down at San Diego about six weeks, and I think altogether this job [102] gave me a little better than a week scattered out all the way through. Then out I went again, and now I am not on anything. If it wasn't that I didn't have awful good credit in San Diego

(Testimony of Edward E. Hannum.)

we would have starved—or in Elsinor, I mean.

Q. At the time of the meeting of the union on June 1st you had not paid your dues at that time?

A. Not on June 1st?

Q. You paid them some time later?

A. I paid part of them; not all of them. I did not have money enough.

Q. You never have paid all your dues?

A. Not all of my dues.

Mr. Howlett: That is all.

Trial Examiner Stephenson: Any redirect examination?

Mr. Mauritsen: Yes, I have some questions.

Trial Examiner Stephenson: Proceed.

#### Redirect Examination

Q. (By Mr. Mauritsen) Mr. Hannum, counsel for Respondent asked you if the company knew that you were a member of the union; which called for a conclusion.

Mr. Howlett: I think the record will show that I asked him whether he told them that he was.

(Discussion off the record.)

Q. I will ask you if you were present at the meeting on June 1st? [103] A. Yes, sir.

Q. Did you sign an application card for membership in the union? A. Yes, sir.

Q. At that meeting? A. Yes, sir.

Q. Was Mr. Bodine, Mr. Larson, Mr. Gantz and Mr. Mills present at that meeting on June 1st?

(Testimony of Edward E. Hannum.)

A. Will you name them again please?

Trial Examiner Stephenson: The reporter will read the question.

(The desired question was read by the reporter.)

A. Mr. Larson wasn't.

Q. Mr. Larson wasn't? A. No, sir.

Q. Were the others I have named?

A. Yes, sir.

Q. These men worked for the Respondent, did they not? A. Yes.

Trial Examiner Stephenson: In what capacity?

The Witness: Mr. Bodine is plant superintendent; Mr. Gantz, I don't know just exactly what he would be. I would say he was yard foreman. He has charge of the yard. And Mr. Mills has charge of the pit crew.

Q. (By Mr. Mauritsen) Now, Mr. Hannum, were you ever able [104] to negotiate with the company, as representative of the union?

A. No, sir.

Q. In individual negotiations, could you walk up to Mr. Larson or Mr. Bodine and say, "Gus," or "Art," as the case may be, "Something isn't quite in order here and we would like to talk it over?"

Could you do that?

Mr. Howlett: I object to the question as calling for a conclusion of the witness.

Trial Examiner Stephenson: Objection overruled. Go ahead. Can you answer that?



(Testimony of Edward E. Hannum.)

A. Well, I never did. [105]

Recross Examination [107]

Q. (By Mr. Gately) Do you know of any of the real active members of the union who have been put back to work?

A. Yes, sir; Louis Juarez.

Q. Is he the only one?

A. And Mark Damron is back. Those are the only two I can recall now that were active members. They were officers of the union. [110]

Recross Examination

Q. (By Mr. Howlett) Were all the men on strike on the picket line——

A. Yes, sir. [111]

Q. ——every day. How many men were there on the picket line?

A. I don't know the exact number. Each day we must have had around approximately a hundred or a hundred and some odd, each day out there. [112]

Redirect Examination [113]

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SYLVESTER OSBORNE,

called as a witness by and on behalf of the Labor Board, having been first duly sworn, testified as follows:

(Testimony of Sylvester Osborne.)

Trial Examiner Stephenson: State your name, please.

The Witness: Sylvester Osborne.

Direct Examination

Q. (By Mr. Mauritsen) Mr. Osborne, have you ever worked for the respondent company in this hearing?

A. You mean the L. A. Brick & Clay?

Q. Yes. A. Yes, sir.

Q. When did you start to work for the Respondent?

A. I started in 1936; after Labor Day in 1936. I don't know what day; about the 7th.

Q. That was in—— A. In September.

Mr. Howlett: I will stipulate he started on September 8th.

The Witness: Something like that.

Trial Examiner Stephenson: Will you accept the [114] stipulation?

Mr. Mauritsen: Yes, it is accepted.

Q. What work did you do at the Respondent's plant?

A. I worked around in the yard as a laborer, then I built wickens, then I was truck driver helper, and then I would drive a truck.

Q. What wage did you receive when you went to work? A. 40 cents an hour.

(Testimony of Sylvester Osborne.)

Q. Did you receive any raises in wages while you were working for Respondent?

A. Yes, sir; 5 cents one time and 2½ cents another time.

Q. Do you recall at what time you received the 5 cent raise?

A. No, I couldn't recall that time. I know I got the raise. That's all.

Q. You heard Mr. McNutt testify as to the general policy of the company to give the employees a raise after 30 or 60 days?

A. Well, I started at 40. Before they got the 5 cent raise they had to work there so long.

Q. This last raise you received, was that the general raise that had been given throughout the plant?

A. Yes, they gave a 5 cent raise and a 2½ cent raise later.

Q. Have you ever received any complaints regarding your work?

A. I don't think so. I never did, no, sir. I got a [115] recommendation to that effect.

Q. Did you attend this first meeting held June 1st, 1937?

A. The first meeting they had up there.

Q. Did you sign an application for membership in the union at that meeting?

A. Yes, sir.

Q. When were you laid off?

(Testimony of Sylvester Osborne.)

A. I wasn't laid off.

Q. Did you go out on strike?                    A. Yes, sir.

Q. Have you ever applied for reinstatement?

A. Yes, sir.

Q. On what occasion?

A. Well, after the strike was called off they told us to go back and ask for our jobs, and I went in and asked for my job back.

Q. After June 25th?

A. I couldn't just recall that. They come down there and told us that the strike was called off and Nylander said it would be best to ask for our jobs back, and I went into the boss and asked for my job. I never kept no dates as to that.

Q. When you re-applied for your job, to whom did you re-apply?                    A. Mr. Bodine.

Q. What did he say at that time? [116]

A. He said he didn't have no place for me. He said I had better look some place else for a job.

Q. Did you ask for a recommendation at that time?                    A. No, sir.

Q. Did you apply for work at any time after that?                    A. Yes, sir.

Q. To whom did you apply?

A. Mr. Bodine.

Q. What did he say?

A. He said he didn't have nothing for me. I asked him for a recommendation and he wrote me a recommendation, and he said he didn't have noth-



(Testimony of Sylvester Osborne.)

ing against my work at all, and he wrote me a recommendation. Do you want to see the recommendation?

Q. No. I think it is sufficient.

Mr. Howlett: Better get it out. I would like to look at it.

Mr. Mauritsen: All right.

(Witness hands document to Mr. Howlett.)

Q. (By Mr. Mauritsen) Did Mr. Bodine say anything at that time regarding the union?

A. I told him I would like—no, he never said anything about the union at all. He said, “We boys be careful what we sign after that.”

I said, “I have got a family, and I need my job back.” [117]

And he said, “You boys be careful what kind of paper you sign after this.” That is what he told me when I first asked him for the job.

Q. That was when you first asked him for your job back? A. Yes.

Q. He said, “You will be careful what you sign after this”? A. Yes, sir.

Q. Have you applied for any work since that time?

A. Yes, sir, two times. That is when I got the recommendation, the last time I was over at the plant.

Q. Are you now employed? A. No, sir.

Q. Would you be willing to accept your job back

(Testimony of Sylvester Osborne.)

from Respondent in the event that the National Labor Relations Board would order Respondent to reinstate you?      A. Yes, sir.

Q. Did you ever talk with any of the plant foremen about the union?

A. No, sir, I didn't.

Mr. Mauritsen: You may inquire.

Cross Examination

Q. (By Mr. Howlett) Did you attend all three of the meetings that were held by the union?

A. I attended two of them.

Q. The first two? [118]

A. The first one and that one in the pool room they are talking about.

Q. That first meeting was a large meeting, was it not?      A. It wasn't so large.

Q. How many would you say?

A. I couldn't say just how many there were; quite a few.

Q. Do you have any idea about the number that were there?

A. Maybe 50 or 60, something like that. I never counted them.

Q. Then the third meeting, was that a very large meeting?

A. Well, the pool room was small. I couldn't say how many were there.

Q. Would you say more than in the first meeting?      A. Well, there were as many, anyway.

(Testimony of Sylvester Osborne.)

Q. There was no reason given at the time you applied for reinstatement as to why you were not returned?

A. He never gave me no reason at all.

Q. Did you ask him for any?

A. He says he didn't have any. The recommendation shows that there wasn't any reason why he shouldn't give me my job back. He says he didn't have nothing against my work.

Q. You made a statement here a moment ago about being careful what you said. I didn't hear all of it.

A. He said, "You boys will be careful what you sign after this." [119]

Q. Who said that?                      A. Mr. Bodine.

Q. When was that?

A. That was when I first went back for the job.

Q. Have you any idea what date that was?

A. That was when the boys went back and asked for their jobs.

Q. Was it long after—

A. Well, it was just after the strike was called off; if you know what date that was.

Q. It was in June.

A. Well, I didn't think about the date.

Q. Was it shortly after the strike had been called off?                      A. The next morning.

Q. The following morning?                      A. Yes.

[120]

(Testimony of Sylvester Osborne.)

Q. (By Mr. Gately) I would like to know what it was with reference to that you would be careful of what you signed. Were you in the custom of signing something and had signed the wrong thing?

A. Them cards in the union the same night.

Mr. Howlett: Same objection.

Trial Examiner Stephenson: We will let that stand.

The Witness: I suppose that was what it was.

Trial Examiner Stephenson: That clears it up.

The Witness: I never asked what it was. It was none of my business. [121]

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LESTER C. HAZLETON,

called as a witness by and on behalf of the Labor Board, having been first duly sworn, testified as follows:

Trial Examiner Stephenson: State your name, please.

The Witness: Lester C. Hazleton.

Direct Examination

Q. (By Mr. Mauritsen) Mr. Hazleton, have you ever been employed by the respondent company? A. Yes, sir.

Q. Do you recall on what date you started to work for the [123] company?



(Testimony of Lester C. Hazleton.)

A. On the 8th of December, 1929.

Q. 1929? A. Yes, sir.

Q. At what time did you stop working for the Respondent? A. June 3rd, 1937.

Q. Were you laid off at that time?

A. Yes.

Q. Did you work continuously from 1929 until June 3, 1937? A. Yes, sir.

Q. At what rate were you paid when you started working for the company?

A. 40 cents an hour.

Q. Did you receive any raises while you were working for the company? A. Yes.

Q. What was your wage rate when you were discharged on June 3, 1937?

A. 52½ cents.

Q. Did you receive the general 2½ cent raise given on June 1st, 1937? A. Yes.

Q. Of what did your work consist while you were working for Respondent?

A. I started in there pushing a wheel barrow and I ended up [123-A] down in the yard emptying sewer pipe kilns.

Q. Did you work in the same crew with Mr. McNutt? A. No, sir.

Q. You worked in a different crew?

A. Yes, sir.

Q. Were there a number of these crews working in the yard?

(Testimony of Lester C. Hazleton.)

A. Yes, sir. There was a sewer pipe kiln, roofing tile kiln, then they had some gangs there loading trucks.

Q. Did you attend the meeting held by the union on June 1st, 1937? A. Yes, sir.

Q. Did you sign an application card at that meeting? A. Yes, sir.

Q. You became a member of the union?

A. Yes, sir.

Q. At the time when you were laid off on June 3rd, 1937, was there anybody working in your same crew who had not been with the company as long as you?

A. Yes, sir; there would be all of them.

Q. In other words, you were the oldest man in the crew? A. Yes, sir.

Q. Do you know of your own knowledge whether there was anyone else in these other crews, doing similar work, who had not been with the company as long as you?

A. In the roofing tile department, yes, there was some. [124]

Q. That hadn't been?

A. That hadn't been on as long as I had.

Q. Now, Mr. Hazleton, I show you Board's Exhibit 4. Is your name on that list attached to the letter? A. Yes, sir.

Q. Your name is on that list? A. Yes, sir.

Q. Now, Mr. Hazleton, you have been with the company for some time.

(Testimony of Lester C. Hazleton.)

Did you ever talk about the union with any of the foremen or supervisors?

A. At one time, yes.

Q. Will you state the occasion?

A. Well, I would say it was along about the first of May.

Q. 1937?

A. Yes; first of May, 1937. Mr. Bodine came around to me and he called me off to one side, and he told me that he thought maybe the union would come in there, and if it did, there wouldn't be no chance for the bonus for Christmas like there was last year. Last year was the only other time we had a bonus for Christmas; and he said there wouldn't be no chance if a union came in, for a bonus; and for me to kind of spread it around over the yard among the boys there.

Mr. Howlett: What were you doing at the time?

The Witness: I was hauling brick, setting a new tunnel [125] kiln. I was unloading the wagons that the truck driver was hauling up.

Q. (By Mr. Mauritsen) Do you know about what time it was?

A. About 10:00 o'clock in the morning.

Q. About 10:00 o'clock in the morning?

A. Yes.

Q. You have been with the company since 1929?

A. Yes, sir.

(Testimony of Lester C. Hazleton.)

Q. During the period of your employment how many bonuses did you receive?

A. One; that is in 1936.

Q. The one that was paid in 1936?

A. Yes, sir.

Q. What part of 1936?

A. Well, let's see: We got it on about the 18th of December, 1936.

Q. Then on approximately May 1st Mr. Bodine told you that if the union came into the plant that the men would not get another bonus?

A. Yes.

Q. And you understood that he was referring to this bonus paid the previous year?

A. Yes, sir, he said, "In case the union comes in here, there won't be no chance for a bonus this coming year like there was last year." [126]

Q. And did you testify that he told you to spread that word around among the men?

A. Yes; kind of tell some of the boys, or when there was a meeting, or anything, to get up and make a speech like that.

Q. This was Mr. Bodine, the plant superintendent, that told you this?      A. Yes.

Q. Were you at the meeting on June 1st?

A. Yes, sir.

Q. Did you get up and make a speech telling the boys what would happen if they joined the union?      A. No, sir, I didn't.



(Testimony of Lester C. Hazleton.)

Q. You didn't carry out Mr. Bodine's instructions?

A. No; although he told me that I didn't need to say anything about who told me that, or anything.

Q. He didn't want it known?

A. Yes, that was it.

Q. Who laid you off on June 3rd?

A. Harry Gantz.

Q. Harry Gantz. Was he the Harry Gantz who was present at the meeting on June 1st?

A. Yes, sir.

Q. Did he give any reason for your lay-off at that time?

A. He says on account of business being so slack that he guessed he wouldn't need me any more.

[127]

Q. Did he tell you it was a permanent lay-off or a temporary lay-off? A. He didn't say.

Q. Other witnesses have testified that a notice was posted on June 2nd on the time clock, is that true? A. Yes, sir.

Q. Did you see the notice? A. Yes, sir.

Q. What did that notice say?

A. It stated on account of business being so slack that there had to be a general lay-off.

Q. But the company had just given a general raise in pay?

A. Yes, they gave us a raise in pay on the 1st.

(Testimony of Lester C. Hazleton.)

Q. Mr. Hazleton, has it been your experience with the company that raises in pay are given when the business is slack?

Mr. Howlett: Just a minute. We object to that as calling for a conclusion of the witness.

Trial Examiner Stephenson: He may answer. Objection overruled.

Mr. Howlett: Also on the ground that no proper foundation has been laid.

Trial Examiner Stephenson: Objection overruled.

The Witness: What was that question?

Trial Examiner Stephenson: Will you read the question?

(The last question was read by the reporter as set forth [128])

A. Well, there was one crew that worked pretty steady. That was the sewer pipe—where they make the sewer pipe.

Q. But in the other departments they worked several days and then were off for a while, then came back to work, is that right?

A. Well, they would work maybe a couple of hours a day—come out and load a truck, then they would go back home, then they might show up next morning and maybe work all day that day. It was just according to what they had to do.

Q. But it was only one crew that worked steady?

A. Yes. They worked quite steady.

(Testimony of Lester C. Hazleton.)

Q. And the rest of you worked intermittently?

A. Yes.

Mr. Mauritsen: You may inquire.

### Cross Examination

Q. (By Mr. Howlett) You were speaking of this spread work; that was in 1932?

A. Well, it was in the worst part of the depression.

Q. 1929 and 1930?

A. I should say it was along in 1932.

Q. 1932. And all this testimony you have given about your experience that you have just testified, was in 1932 and prior thereto?

A. Well, that is when the worst of it was, yes.

Q. You attended the meeting on June 1st, you testified? [130]

A. Yes, sir.

Q. How many men were there there at that time?

A. Well, I wouldn't say just exactly. I would say 50 or 60; something like that.

Q. Did you attend any other meetings?

A. Yes, sir.

Q. Was there a larger number at any of them?

A. Yes. The second meeting there was a larger crowd, I believe. I wouldn't say just how many there was.

Q. Mostly employees from the L. A. Brick?

A. Yes. They were all employees at that second meeting, except one.

(Testimony of Lester C. Hazleton.)

Q. What has been your work for the past year?

A. Well, I have been in the yard, emptying sewer pipe kilns, up until June 3rd.

Q. And what did you do when emptying those kilns?

A. Well, it is to pile the sewer pipe up. There was four fellows working in the kiln and there was two in the yard; and they loaded them on the wagon and the truck driver brings them down to the yard and distributes them down there where they go; and I and another fellow was down there and would sort them and pile them up. [131]

Q. Did you have any complaints from your employer at any time about that defective pipe going through without being rejected?

A. Well, once or twice one would send down one kind of an order, and another would send down another kind.

Q. I am speaking now of the defective pipe.

A. Yes.

Q. What kind of an order are you referring to?

A. One would send down an order to sort them one way and to put in a certain kind, and I would put in that certain kind; another one would come down and tell me to put in another kind. [133]

Q. Well, who knew about any of those pipe getting through after you inspected them?

A. Either the foreman or Mr. Bodine.

Q. Who was the foreman?



(Testimony of Lester C. Hazleton.)

A. Harry Gantz.

Q. Were you ever notified, after rejection by a customer of defective pipe?

A. Once or twice they did. Maybe they would just be talking and just tell me.

Q. And what did they say to you?

A. Well, they wouldn't come right out and tell me, but they would say, "So-and-so found a few bad pipe in that last lot of sewer pipe that went out," and wanted me to see that it was all looked at a little bit better; but very seldom they ever told me anything about that at all.

Q. Do you remember any particular contract where there was a large quantity of this pipe rejected on account of it being defective?

A. No, sir.

Q. You have no recollection of that? [134]

A. No, sir.

Q. When was the last time Mr. Bodine spoke to you about that?

A. It has been at least two years.

Q. He hasn't said a thing since that time?

A. Not about sorting sewer pipe.

Q. Has Mr. Gantz said anything to you since that time?      A. No.

Q. Has anyone else in the company said anything to you since that time?      A. No.

Q. So you haven't had any complaints since that time?      A. No.

(Testimony of Lester C. Hazleton.)

Q. Have you applied for work since you left?

A. No, sir. They told me to get my time the next morning, so I didn't figure there was much use going back.

Q. You never asked them then? A. No.

Q. Do you know, as a matter of fact, that quite a number of men that went out the same time you did are back?

A. Well, I don't know about the same time I did, but there are several of them back that went out on strike.

Q. But you don't know the number?

A. No. I never have had a chance to see the cards around the office to check on it.

Q. You say on May 1st, 1937, you had a conversation with [135] Mr. Bodine?

A. Yes, sir.

Q. Who was present beside Mr. Bodine?

A. Just by ourselves.

Q. Where were you at that time?

A. Well, we were right by the office. We was unloading brick. I guess it was about ten feet from the office. He called me off to one side.

Q. He called you over? A. Yes.

Q. What did he say to you first?

A. Well, he told me, "I guess you have heard about the union?" That there was a lot of union talk around Los Angeles and some of the companies up there had signed for it, and he said maybe it

(Testimony of Lester C. Hazleton.)

would come down that way, and if it did, he told me to use my own judgment about signing up for it.

Q. That you could use your own judgment as to what you did?

A. Yes; and he told me, "In case a union does come in, there won't be no chance for a bonus this year."

Q. Have you and Mr. Bodine been friendly for a period of time?

A. Well, we seemed to be friends for the last seven years, I guess, that I have worked with him.

Q. Did you notice that there was slack time coming on there at the time you left? [136]

A. I didn't notice any, no.

Q. You wouldn't know about the orders being taken at the time for the goods to be produced thereafter, I presume?

A. Not exactly, no; but we had been working every day; mostly Saturdays and Sundays, too, and overtime.

Q. And at times you may be laying ahead getting up orders for stock, is that correct?

A. Yes, but most of the time, it has just been the last two or three months——well, two or three months before I was laid off that we got any pipe in the yard at all. Usually it was going out as fast as we put it in.

Q. Did you stock some at the yard?

A. At the Alberhill plant they got started getting ahead a little bit when I was laid off there.

(Testimony of Lester C. Hazleton.)

Q. Yes.

A. But usually everything was taken out just as fast as we put it in there.

Q. Up to that time?

A. Yes. Several times they didn't have enough pipe to fill the orders.

Q. That was prior to the time of the lay-off?

A. Yes. [137]

Recross Examination

Q. (By Mr. Gately) Did you ever get a pay cut while you were there; have your wages reduced?

A. Yes.

Q. You have busy seasons and slack seasons there? A. Yes.

Q. What is the usual custom in those slack seasons? Did they lay you off in wholesale groups, or did they just let the men come around and get a couple of hours?

A. They would let them come around and get what time they could.

Q. But there was no general lay-off?

A. No.

Q. When you got these other pay raises did they raise you one day and then lay you off two days later? A. No.

Q. That never happened before? A. No.

Q. Do you know how many that were laid off prior to the strike have been returned to work, if any?

A. I couldn't say as to that. [138]



(Testimony of Lester C. Hazleton.)

Q. You personally don't know anybody that was laid off prior to the strike that has been returned to work since?

A. Well, I know some of them went back to work since they signed up for the union, if that is what you mean.

Q. I mean the men who have been laid off before the strike was called?

A. Yes, there was some went back to work.

Q. There was? A. Yes.

Q. You don't know how many?

A. No, I don't know how many.

Mr. Gately: That's all.

Trial Examiner Stephenson: Any further questions?

Q. (By Mr. Howlett) Just one question. Mr. Hazleton, all this experience you have related here about your experience in lay-offs, was in the period of five years prior to the time you are now testifying about? A. Yes.

Q. You are working on a turkey ranch now, are you?

A. Yes, sir. [139]

Recross Examination [142]

Redirect Examination [143]

Q. (By Mr. Mauritsen) Mr. Hazleton, if the Board should order your reinstatement with the payment of wages which you would have earned,

(Testimony of Lester C. Hazleton.)

would you be willing to accept the reinstatement with the company?      A. Yes.

Trial Examiner Stephenson: Mr. Mauritsen, I don't believe that question was asked of Mr. McNutt.

If there is no objection I suppose that question can be asked him from where he sits right now.

Mr. Mauritsen: I was intending to bring him back later.

Trial Examiner Stephenson: All right.

Mr. Mauritsen: Or we may as well have the record show it now. He can be considered as still under oath.

Trial Examiner Stephenson: Yes, he is under oath.

Q. (By Mr. Mauritsen) Mr. McNutt, if the Board should order your reinstatement with payment of wages from June 3rd to the time of your re-employment, would you be willing to [144] accept that employment?

Mr. McNutt: I would be mighty glad to have that job back—any job.

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## HENRY BOONTJER

called as a witness by and on behalf of the Labor Board, having been first duly sworn, testified as follows:

(Testimony of Henry Boontjer.)

Trial Examiner Stephenson: State your name, please?

The Witness: Henry Boontjer.

Trial Examiner Stephenson: How do you spell that?

The Witness: B-o-o-n-t-j-e-r.

Direct Examination

Q. (By Mr. Mauritsen) Mr. Boontjer, have you ever been employed by respondent company?

A. Yes, I have.

Q. At what time did you start to work for respondent company?

A. April 8, 1937.

Q. 1937? A. Yes.

Q. What work did you do for respondent?

A. Drawing kilns; roofing tile kilns.

Q. Was that work similar to the work done by Mr. McNutt and Mr. Hazleton? [145]

A. I worked with Mr. McNutt full time.

Q. You worked in the same crew?

A. I worked with him all the time. We worked together.

Q. Did you start at 40 cents an hour?

A. Yes.

Q. Did you receive any raises while you were in the employ of Respondent? A. 2½ cents.

Q. Was that the general raise on June 1st?

A. Yes, sir.

(Testimony of Henry Boontjer.)

Q. Did you ever receive any complaints regarding your work?

A. When I started I probably was a little green at some things they told me and I learned as fast as I could, and I was doing all right. I suppose everybody has got to learn.

Q. Surely. What was the first union meeting that you attended?      A. June 5, 1937.

Q. 1937?      A. Yes.

Q. Did you apply for membership in the union at that time?

A. Yes; I joined and paid up.

Q. You signed the application card and paid your dues?      A. Yes, sir.

Q. When did your employment cease with Respondent?      A. When? [146]

Q. Yes.      A. June 8, 1937.

Q. And you had joined the union on June 5, 1937?      A. Yes.

Q. Who laid you off?      A. Harry Gantz.

Q. Did he give any reason for your lay-off?

A. Oh, he says the same thing as the rest of the fellows, I guess.

Trial Examiner Stephenson: A little louder, please.

A. The same as the rest of the fellows that got laid off.

Q. Did you attend the union meeting after the time when you were laid off?



(Testimony of Henry Boontjer.)

A. Yes. I guess that one in the pool hall there when that letter they took to them about—

Q. This letter? I am showing you Board's Exhibit 3. Is that the letter to which you are referring? A. Yes.

Q. You were present at the meeting at which that was drafted? A. Yes.

Q. Was the vote taken of the members present regarding the approval of this letter? A. Yes.

Q. Did you vote in favor of the sending of this letter? [147] A. Yes.

Q. Did you ever apply for work after the strike had been called off?

A. I went to see Art at his house. I heard they was hiring men back and I went to Art Bodine's house and he said they was pretty well—I said I heard they was hiring, and he said there was no use for a new man there.

Q. Do you recall about what time or what the date was on which you applied for re-employment?

A. Oh, it was right after—between the 1st and 15th of August.

Q. Between the 1st and 15th of August?

A. Or July, I guess it was.

Q. The 1st and 15th of July. A. Of July.

Q. That would be two or three weeks after?

A. Yes. It was right after the strike.

Q. Within two or three weeks after the strike had been called off? A. Not over a month.

(Testimony of Henry Boontjer.)

Mr. Mauritsen: Now, Mr. Examiner, I should like to move at this time to include in the complaint the name of the witness I have just been examining.

At the time when the complaint was drafted it appeared that Mr. Boontjer would not be present and would not be avail- [148] able, and for that reason his name wasn't included. However, since he is one of the employees who joined the union and was laid off, the Board feels that his name should be added to the complaint; both appendix, both A and B at this time.

Trial Examiner Stephenson: You so move that the complaint be amended?

Mr. Mauritsen: Yes.

Trial Examiner Stephenson: Any objection?

Mr. Howlett: Yes. I object at this time to bringing a new party into the action.

Trial Examiner Stephenson: The objection will be overruled. The complaint will be amended.

(Discussion off the record.)

### Cross Examination

Q. Are you working now? A. Yes. [149]

Q. Where are you working?

A. I am working—well, I am making tools; screw drivers and chisels; working at Elsinor.

Q. You stated that Mr. Bodine, at the time you went to see him, said, "There was no use; we are not putting on any new men." Is that what he said to you? A. "Not putting any more men on."

(Testimony of Henry Boontjer.)

Q. "Not putting any more men on"?

A. Yes.

Q. So it wasn't new men?

A. No, I wasn't a new man.

Q. You were a new man yourself?

A. I worked there before.

Q. That is what I asked you a minute ago.

A. Yes.

Q. When did you work there before?

A. Before June 8th.

Q. That is the only time you worked there, between April 8th and June 8th, 1937? A. Yes.

Q. Then you stated that Mr. Gantz said, "Your being laid off is the same as the rest of the lay-offs"? A. Yes.

Q. And he referred to quite a number of men who were being laid off at that time? [150]

A. That there was a slack season there.

Q. Lack of season? A. Slack season.

Q. Slack season? A. Yes.

Q. And you knew what he meant by that?

A. Yes.

Mr. Howlett: That is all.

Trial Examiner Stephenson: Anything further?

#### Redirect Examination

Q. (By Mr. Mauritsen) If the Board should order your reinstatement with the back payment of wages from the time of your lay-off, would you accept reinstatement in the Respondent's employ?

(Testimony of Henry Boontjer.)

A. I would.

Trial Examiner Stephenson: Any further questions?

Recross Examination

Q. (By Mr. Howlett) You understood from Mr. Bodine, he meant the reason he was not putting you back was on account of lack of work? Is that the idea you received from him?

A. I wouldn't know.

Q. That is what he said to you?

A. Yes, but I don't know. I like to have a smile from the boss always, and he never cracked a smile to me or talked to me. [151]

Q. When business is bad, smiles are few and far between sometimes.

Redirect Examination

Q. (By Mr. Mauritsen) Why did you apply for work between July 1st and July 15th?

A. Well, I figured I was making practically just a living where I was, and the man I was working for said if I could make more money in the brickyard, I should apply.

Q. Did you know of any men who had been rehired during that period?

A. Yes. They kept telling me they was rehiring men and said I should try to get back on, and I enjoyed working there as long as I worked there. I never had a bit of trouble, and that is the reason I would like to have gone back. [152]



## THOMAS A. RODDY

called as a witness on behalf of the Labor Board, being first duly sworn, testified as follows:

Trial Examiner Stephenson: State your name?

The Witness: Thomas A. Roddy.

Trial Examiner Stephenson: How do you spell your last name?      The Witness: R-o-d-d-y.

## Direct Examination

Q. (By Mr. Mauritsen) Have you ever worked for the L. A. Brick & Clay Products Company?

A. Yes.

Q. When did you start to work for that company?      A. On or about January 1st, 1937.

Q. And in what capacity were you employed by the company?      A. General laborer.

Q. At what wage rate were you paid at the start of your employment?      A. 40 cents per hour.

Q. Did you receive any wage increases?

A. Yes, sir.

Q. Do you recall on what occasions you received a wage in- [154] crease; about what time?

A. I can't recall the date, but it wasn't so long until we received the 45 cents.

Q. Then did you receive any further wage increase?

A. I believe so. About June 1st, I believe, was when we received the 47½ cents.

Q. The general raise?      A. Yes.

Q. Did you work in any other capacity than as general laborer for the company?

(Testimony of Thomas A. Roddy.)

A. Well, most of the work that I performed was conveying clay to the dry pans. I did more of that than any other one task, but, however, I have worked at other labor; whatever they might call me for.

Q. But you were employed principally in conveying clay to the dry pans? A. Yes, sir.

Q. Did you attend the union meeting held June 1st? A. Yes.

Q. Did you sign an application for membership in the union at that time? A. Yes, sir.

Q. Did you see Mr. Bodine at that meeting?

A. Yes, sir.

Q. Did you see Mr. Mills? [155]

A. Yes, sir.

Q. Did you see Mr. Gantz? A. Yes, sir.

Q. Did you see Mr. Baer?

A. Yes, sir, I saw Mr. Baer. He was present.

Q. When did your work for the company cease?

A. June 3rd, I believe.

Q. Who laid you off at that time?

A. Mr. Baer.

Q. Mr. Baer? A. Yes.

Q. Did he say you were discharged or that you were laid off. A. He told me I was laid off.

Q. Did he give you any reason?

A. Nothing more than he said I was—that I hadn't been working so long as—in other words, just according to seniority, as I had been there a shorter time than lots of the others and he would have to lay me off according to seniority.

(Testimony of Thomas A. Roddy.)

Q. Did you attend the union meetings after the meeting held June 1st?

A. Yes, sir. I attended some of them.

Q. Were you at the meeting of June 5th, when officers were elected?

A. At the Townsend Hall, yes, sir.

Q. You voted for the officers of the union? [156]

A. Yes, sir.

Q. Were you at the meeting of June 9, 1937?

A. Well—

Trial Examiner Stephenson: Tell him where the meeting was held.

Q. (By Mr. Mauritsen) In the pool hall?

A. At the pool hall?

Trial Examiner Stephenson: I wanted to identify it for the witness.

The Witness: I was at that meeting, but I can't recall the date.

Trial Examiner Stephenson: But you were at the meeting in the pool hall?

The Witness: Yes, sir, I was there.

Q. (By Mr. Mauritsen) At that meeting in the pool hall was this petition, which is marked Board's Exhibit 2, presented for consideration?

A. Yes, sir. I voted for that.

Q. You voted for it. That was considered at that meeting?

A. Yes, sir.

. Did you appear on the picket line during the strike?

A. Yes, sir.

(Testimony of Thomas A. Roddy.)

Q. Did you see any of the company foremen or officials while you were on the picket line?

A. Well, I have seen them coming to and from the plant. [157]

Q. Because of your presence, they had opportunity to see you on the picket line, did they not?

A. Yes, sir.

Q. Did you apply for reinstatement after the strike was called off? A. Yes, sir.

Q. What was the first occasion on which you applied for reinstatement?

A. Well, I can't recall the date, but it was some time after the strike was called off. When it was settled I went to Mr. Bodine's house one afternoon and asked him for employment and he said he couldn't give me any encouragement at that time; that he had nothing that he could offer me.

Q. You say that was after the strike was called off. Do you recall how soon after?

A. No, sir, I can't recall. I didn't keep any record of dates.

Q. Would you say it was within two weeks after the strike was called off?

A. Well, it was something like that; possibly three weeks.

Q. Did you apply for reinstatement after that?

A. Yes, sir.

Q. Did you receive employment?

A. No, sir.

Q. How many times in all did you apply for reinstatement? [158]



(Testimony of Thomas A. Roddy.)

A. Three times, I believe.

Q. Three times, and at no time, or on none of those occasions were you offered to be re-employed?

A. No.

Mr. Mauritsen: That is all.

### Cross Examination

Q. (By Mr. Howlett) You only worked for the company for about six months at the time you were laid off, is that correct?

A. Well, approximately.

Q. Five months?

A. January 1st to June 3rd.

Q. You had no difficulty with the company while you were working there? A. None whatever.

Q. You have no hard feeling toward the company at the present time, have you?

A. No, sir. [159]

Q. (By Mr. Howlett) You were on the picket line for some time during this difficulty you were having?

A. Well, I was there sometimes; not every day.

Q. But you were there part of the time?

A. I was there part of the time.

Q. And you knew some of the men that were on the line? [162] A. Yes.

Q. Isn't it a fact that a number of those men are now working with the company, that were on the picket line?

A. Yes, there are some there; yes, sir.

GREGORIO CORDERO

called as a witness on behalf of the Labor Board, having been [163] first duly sworn, testified as follows:

Trial Examiner Stephenson: State your name.

The Witness: Gregorio Cordero.

Trial Examiner Stephenson: Will you spell that.

The Witness: G-r-e-g-o-r-i-o C-o-r-d-e-r-o.

Direct Examination

Q. (By Mr. Mauritsen) Now, Mr. Cordero, have you ever been employed by the L. A. Brick & Clay Products Company? A. Yes.

Q. When did you start to work for this company? A. April 17, 1937.

Q. April 17, 1937? A. Yes.

Q. What wage did the company pay you at that time? A. 40 cents an hour.

Q. 40 cents an hour? A. Yes.

Q. Did you receive any raise in pay while you were working for the company?

A. After 60 days, yes.

Q. After 60 days. How much?

A. 47½ cents an hour. I received that much.

Q. What work did you do while you were working for them?

A. I worked in the yard loading trucks. Sometimes I worked on the pipe setters gang; sometimes I worked with the brick [164] setters; and most of the time I worked in the yard loading trucks.

Q. Loading trucks? A. Yes.

(Testimony of Gregorio Cordero.)

Q. Mr. Cordero, did you attend the union meeting held June 1st? A. Yes.

Q. Did you see Mr. Bodine at that meeting?

A. Yes.

Q. When did your employment with the company end? A. What do you mean?

Q. When were you laid off by the company?

A. June 3rd.

Q. Who laid you off? A. Harry Gantz.

Q. Harry Gantz? A. Yes.

Q. What did he say to you at that time?

A. Well, he told me that they have to lay off some men; I was one of the new men that was hired, so I would have to be laid off; he would be very glad when business picked up to put me back to work.

Q. In other words, that you would be re-employed at a later date?

A. Yes, and he gave me a letter for recommendation. I [165] have got it here.

Q. In other words, you hadn't received any complaints regarding your work?

A. No, not at all.

Q. So far as you knew, your work was entirely satisfactory to the company? A. Yes.

Q. Did you join the union on June 1st?

A. Yes, I did.

Q. Did you sign an application for membership?

A. Yes.

Q. Did you attend the meeting June 5th, 1937?

(Testimony of Gregorio Cordero.)

A. Yes, I did.

Q. That was the meeting at which the officers were elected?      A. Yes.

Q. Did you attend the meeting on June 9 in the pool hall?      A. No.

Q. You didn't attend that meeting?      A. No.

Q. After the strike was called off, did you apply for work?      A. Yes.

Q. To whom did you apply?

A. To Mr. Bodine.

Q. Do you recall about what time that was?

A. About 7:30 in the morning. [166]

Q. On what date?      A. On April 1st.

Q. On what?

A. I don't remember. I guess about the first of April—July; 1st of July.

Q. 1st of July?      A. Yes.

Q. What did Mr. Bodine say to you at that time?

A. Well, he didn't say anything to me for two or three days, and then he said, "That's all boys; we haven't got nothing today."

Q. You didn't get to speak to Mr. Bodine the first time you applied?      A. No, I didn't.

Q. He just said, "That's all"?

A. Yes. I went home and came back the next day.

Q. Then when did you apply the next time after the 1st of July?



(Testimony of Gregorio Cordero.)

A. He told me to come about five or six days; and one day Mr. Bodine pulled me and one or two boys aside, and he told me he was afraid he would have to put off the work because they have some reports that I was making a lot of trouble in the case of the union; that I was making a lot of trouble with the boys there, and that was the reason he didn't want to put me to work again; that there was nothing the matter [167] with my work, but that was the reason he didn't want to put me to work.

Q. Did I understand you to testify that he said you were making trouble in regard to the union?

A. Yes.

Q. Then what did you reply to that?

A. Well, I was working on the Alpha Veda Store when the strike was on, then I went to the boss and asked him for a letter so I can bring proof to Mr. Bodine that I was working every day at the time the strike was on, and then I get the letter and bring it over to Mr. Bodine at the machine shop. I was over there and I go down and take it to him, and he told me to come back the next day, and the next day he put me back to work. [168]

Q. He said to you he couldn't hire you because you had been causing trouble among the boys in respect to the union?

A. That is it.

Q. Then you brought this letter from the manager of the Alpha Veda Store?

A. Yes.

Q. Stating that you had been working at the time of the strike?

A. Yes.

(Testimony of Gregorio Cordero.)

Q. And then Mr. Bodine re-employed you?

A. Yes.

Q. He gave you your job back? A. Yes.

Q. How long did you work there after you were reinstated?

A. Well, I worked there about a month and a half after that. [169]

Q. About a month and a half? A. Yes.

[170]

Q. What happened the day after Mr. Gantz laid you off the last time?

A. I don't remember exactly what happened.

Q. Did you have any argument with any worker on that day?

A. Well, no. I was working all right with a fellow that was there. We had no argument; just a complaint that work, like piece work, and I guess somebody told the boss that I said they was working us too hard; and that is why I guess they laid me off, because I told the fellow they was working us too hard.

Mr. Mauritsen: That is all.

### Cross Examination

Q. (By Mr. Howlett) Mr. Cordero, you came to work on April 17 and were laid off on June 3rd?

A. Yes.

Q. That is the only time you ever worked for the company? A. Yes.

Q. Where did you work before you came there?

A. Working at Davidson Brick Company, Los Angeles.

(Testimony of Gregorio Cordero.)

Q. You were at this meeting June 1st, were you?

A. Yes, sir.

Q. Were there very many men there that night?

A. I guess about 50 or 55 men.

Q. Were you on the picket line?

A. I wasn't there but about 20 minutes one day. I left to [171] go to work at 7:00, and I had been there since about 6:20 or 6:30.

Q. And you got a job at the Alpha Veda Store?

A. Yes, I was working there plastering.

Q. That is a grocery store?

A. They was building a new store.

Q. When did you first go down to talk to Mr. Bodine?

A. After they finished working on that store. I don't know for sure exactly, but I think it was the 1st of July.

Q. At that time he told you there was no work?

A. He didn't tell me exactly. There was quite a few working. He said, "That's all, boys."

Q. Did he say anything about your having worked there for a short time?

A. No, he didn't say anything about that.

Q. Then you went back again after that, did you?      A. Yes.

Q. What did he say about being afraid you would make trouble or had been making trouble?

A. Yes. He said somebody had made reports about me and my brother and another fellow.

Q. Did he say who they had been made to?

(Testimony of Gregorio Cordero.)

A. No.

Q. Did he say who made them? A. No.  
[172]

Q. There was no truth in that, was there?

A. No, because I bring the letter to prove I was working.

Q. So there wasn't any truth in the report that you had been making trouble? A. No. [173]

Q. I see. What work did you do then?

A. On the pipe setting gang.

Q. Who were you working with?

A. Setters.

Q. How many were there?

A. There were four in the kiln and three hauling pipe.

Q. Did you have any argument about any of the work you were doing? A. No.

Q. No dissatisfaction among the employees there about anything? A. No.

Q. Then the next time you heard from somebody in connection with the company, when was that?

A. Do you mean the day they lay me off?

Q. Yes.

A. They say they going to lay me off because somebody make a report on me again that I was making trouble again.

Q. When did you first hear that? Who did you hear it from?

A. From Mr. Gantz, the foreman.



(Testimony of Gregorio Cordero.)

Q. He told you that somebody had made this report? A. Yes. [174]

Q. Did he question you about it?

A. He didn't question me, no. He told me he would have to lay me off again. He told me he would see if he could do something for me later.

Q. Who was there at the time this conversation took place? A. Nobody else.

Q. Did he come out to see you?

A. No, he called me.

Q. You came in to see him? A. Yes.

Q. Are you working now? A. No.

Q. Have you worked since that time?

A. No. I was getting help from the relief. [175]

#### Redirect Examination

Q. (By Mr. Mauritsen) Mr. Cordero, if the Board should order your reinstatement with the company and order that the [177] company pay you back pay from the time you were laid off the last time, would you be willing to accept employment from the company?

A. I would be very glad to. [178]

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Trial Examiner Stephenson: Will it be stipulated that the meeting in Dr. Nylander's office, heretofore testified to by various witnesses, was held on the 15th day of June, 1937?

Mr. Howlett: It is so stipulated.

Mr. Mauritsen: So stipulated.

Trial Examiner Stephenson: Mr. Gately, will you stipulate to that also?

Mr. Gately: Yes.

Trial Examiner Stephenson: All right.

Mr. Mauritsen: I should like at this time to call William G. Ashworth.

Trial Examiner Stephenson: Come forward, Mr. Ashworth.

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### WILLIAM G. ASHWORTH

called as a witness for and on behalf of the Labor Board, having been first duly sworn, was examined and testified as follows:

Trial Examiner Stephenson: State your name.  
[180]

The Witness: William G. Ashworth.

Trial Examiner Stephenson: Just sit down, Mr. Ashworth.

### Direct Examination

Q. (By Mr. Mauritsen) Mr. Ashworth, have you ever been employed by respondent company?

A. Yes, sir. I started in my employ there October 8, 1935, and continued until the 8th of June, 1937.

Q. While you were employed by Respondent, of what did your work consist?

A. I worked in what is known as the yard crew; on different crews in the yard; the yard gang you might say. The work was—there was one crew, a sewer pipe drawing crew; one crew that was the tile

(Testimony of William G. Ashworth.)

roof and brick drawing crew. I worked part of my time on one of those crews and part of my time on the other.

Q. What was your work when you first started to work for the company?

A. I first started in the tile roof crew; that is drawing—kiln drawing in the tile roof and brick.

Q. Is that removing tile and brick from the kiln after they have been burnt?

A. From the kiln. Removing tile and brick from the kiln after they have been burnt.

Q. What were you doing when you last worked for Respondent?

A. I worked around different jobs and then came back again [181] to the tile roof crew and was working in the tile roof crew drawing burnt tile and brick from the kiln again.

Q. What wage did you receive when you started to work for the company?

A. 37 or 37½ cents; I am not positive. 37½ I believe it was.

Q. Did you ever receive any increase in pay while you were working for Respondent?

A. Yes, sir; I received several increases.

Q. Do you recall these—

A. I can't recall the dates or just the amounts. The first increase was up to 40 cents an hour. I don't remember the date, but I believe it was the first of the year.

Q. The first of the year?

A. 1936.

(Testimony of William G. Ashworth.)

Q. 1936?      A. I wouldn't be positive.

Q. What were you receiving when you were last employed by the company?

A. My last increase was when they had a general increase in pay of  $2\frac{1}{2}$  cents an hour. I received 5 cents increase; that brought me up to 50 cents an hour.

Mr. Gantz, my foreman, came to me on Saturday, the last Saturday in May, that would be May the 29th, and called me out from the kiln—he came to the kiln door and motioned [182] to me to come out and said, “What is your rate of pay?”

I said, “45 cents an hour.”

He said, “Then this  $2\frac{1}{2}$  cent increase will make you  $47\frac{1}{2}$  cents?”

And I said, “Yes” and he said, “Well, being as we are expecting you to be the crew leader and take the lead and keep the job going while I am not around, while I am off in some other place in the yard, we are going to give you on the 1st of June, an increase of 5 cents instead of  $2\frac{1}{2}$ .”

That is why I received the 5 cents instead of the general  $2\frac{1}{2}$  cent increase.

Q. Had you ever received any complaints regarding your work?

A. No, sir; I never received any complaints regarding my work, except when I was working in the sewer pipe drawing crew we got called down or balled out a time or two because of the fact that we lost some sewer pipe by the pipe rolling—a com-



(Testimony of William G. Ashworth.)

plaint in that nature that we were blamed for the rolling of the sewer pipe and the damage that ensued. We felt it wasn't our fault exactly; it was more the fault of the poor shape that the kiln floors were in. We always did our best to do our work and work in such a manner in the safest way and in a way to get the material out in the yard in a shape to be sold. Of course, we all make mistakes, and at times our judgment isn't what someone else's judgment would be, but we always did things in the way we thought best. [183]

A. Yes, sir.

Q. Now, Mr. Ashworth, are you a member of the Union?           A. Yes, sir.

Q. When did you join the union?

A. June 1st, 1937.

Q. Was that at the first meeting held by the union?

Mr. Howlett: If your Honor please, I object to having the witness read from a document or something that he has in his hand.

Trial Examiner Stephenson: What is that?

The Witness: It is notes I made myself so that I wouldn't forget any point.

Trial Examiner Stephenson: Well, let's put the notes aside, and then if you want to refer to them—

The Witness: The notes were dates and such as that.

Trial Examiner Stephenson: All right. Go ahead.

Mr. Mauritsen: Will you read the question?

(Testimony of William G. Ashworth.)

(The desired question was read by the reporter as set forth above.)

A. That was the first organizational meeting held in the American Legion Hall on June 1st.

Q. Did you sign an application card to join the union at that meeting?      A. Yes, sir.

Q. Were Mr. Bodine, Mr. Baer, Mr. Mills and Mr. Gantz [193] present at that meeting?

A. Yes, sir; they were everyone there from the start.

Q. Did you attend the meeting of the union held on June 5th?      A. Yes, sir.

Q. Did you participate in the election of officers at that meeting?      A. I did.

Q. Now, on what date were you laid off?

A. June 8th, 1937.

Q. Who laid you off?      A. Mr. Gantz.

Q. Did he say anything to you about the reason for laying you off at that time?

A. No. Mr. Gantz came in the kiln and said, "I have bad news for two of you fellows," and there had been several layoffs—there had been lay-offs every day since the 2nd up until that night, and naturally, all of us that joined the union were expecting it; and I said, "Me and who else?"

And he said, "Hank."

So really I didn't give him any chance to tell me why. I didn't ask him why because I realized at the rate they were going, we were all getting it sooner or later, and I didn't ask the reason.

(Testimony of William G. Ashworth.)

Q. You referred to somebody as "Hank." Who was that person? Hank who? [194]

A. I can't ever pronounce the boy's name. Boontjer. I believe he was working with us in the kiln.

Trial Examiner Stephenson: Will it be stipulated that the witness refers to Henry Boontjer?

Mr. Howlett: So stipulated.

The Witness: That is the man.

Q. (By Mr. Mauritsen) Had you ever discussed with any of these foremen at the plant about the union?

A. On June 2nd, that was the next day after the first organizational meeting in the Legion Hall at Elsinor, Mr. Gantz and I were sitting in the car eating lunch and we talked of the union practically the whole noon hour. He was trying to argue to me—he told me time and time again through the noon hour that the thing for us to do was to leave all outside affiliations and form an employees' union, with no outside affiliations whatever. In fact, he told us we were fools to allow ourselves to be led by a man such as the organizer was that was sent out there for the meeting on June 1st.

Again on—I wouldn't be positive whether it was the same day or the next day. It couldn't have been later than the next day, the 3rd of June, because Lawrence McNutt was fired on the night of the 3rd of June, so it couldn't have been later than that; it possibly was the second. Mr. Gantz came in the kiln



(Testimony of William G. Ashworth.)

and we were caught up with our work and were [195] standing there talking to him—Lawrence and myself—to Mr. Gantz.

He said, “You fellows are fools to affiliate with the C.I.O. or any outside organization. You should form a union, yourselves, and stay clear of all outside affiliations.”

Then, on the evening that I was discharged, going home in the car that evening, Mr. Gantz and I rode in the same bunch back and forth to work. He made the statement, he said, “The mistake you fellows made from the start was joining up with any outside organization whatever.” He said, you should have just formed an employee’s union here in this one plant and stayed clear of all outside affiliations.”

Q. Then you were laid off on the 8th of June, I believe you testified?      A. Yes, sir.

Q. Were you present at the union meeting held June 9th?      A. Yes, sir.

Q. Where was that meeting held?

A. That was held at Alberhill—or Clayton. At Clayton, rather, at the pool hall.

Q. What took place at that meeting?

A. We had a discussion of what kind of a proposition to offer the company, and formulated an agreement to be presented to the company and a committee was appointed to take one copy of the agreement to the plant and one copy of the [196]



(Testimony of William G. Ashworth.)

agreement to the head office of the L. A. Brick Company on Mission Road, Los Angeles.

Q. Was a vote taken upon the adoption of that petition or agreement?           A. Yes, sir.

Q. Was the result announced as being in favor of presenting the petition or agreement?

A. It was unanimous.

Q. And what action was decided upon in the event that the company did not answer the petition or agreement?

A. Well, the question arose what we should do in case the company refused to answer the agreement or to act favorably upon it, and the consensus of opinion was that we should strike, and a secret ballot was taken on the strike.

Q. And what was the result of that ballot?

A. It was voted that in case a favorable return wasn't received on the agreement that we were to call a strike on the morning of June 11 at 7:30, with the provision made that the two burners, Mr. Art Hannum, the burner on the tunnel kiln, and Niles Martinson, the burner on the bee-hive kiln, that they remain on the job, and everyone else called out at 7:30 and a picket line thrown around the plant, but the two burners to remain on the job until the foremen relieved them or until the material in the kiln were in the condition that the fires could be turned out; which was done. [197]

Trial Examiner Stephenson: Mr. Hannum and who was the other?

(Testimony of William G. Ashworth.)

Mr. Mauritsen: I believe that was Mr. Martinson.

Trial Examiner Stephenson: Niles Martinson?

The Witness: Yes.

Trial Examiner Stephenson: Will that be stipulated, gentlemen, that is the name the witness referred to?

Mr. Howlett: Yes.

Q. (By Mr. Mauritsen) Did I understand you to testify that it was agreed that the men would go out on strike on the morning of June 11, but that these burners, as you have designated them, were to remain at work until they were relieved or until the kilns were in the condition that they could be left?

A. Yes, sir.

Q. That was agreed upon?

A. That was agreed upon, and those present at the union were so instructed. The burners were present and instructed.

Q. The burners were present and instructed to that effect?      A. Yes, sir.

Q. On June 10, do you know whether the petitions were delivered?

A. I know from hearsay that the one was delivered at the plant.

Mr. Howlett: Just a minute. [198]

Mr. MacLaren: That is all right. We have admitted they were delivered.

Did the employees go out on strike on June 11?

(Testimony of William G. Ashworth.)

A. The whole force stayed out except for about six men.

Q. Do you know of any of the men who stayed in?

A. Bud Smith stayed in, or went through the picket line rather; and Jack Osborne, and Cornell Lyell. I know this other man, but I can't recall his name. He is a brother-in-law of Joiner. He works on the pipe press. And John Hall.

Q. There were only four or six men who remained in the plant——

A. There were either five or six.

Q. ——At the time of the strike?

A. About five or six, yes, sir. [199]

Q. Did the two burners, to whom you have referred, remain in the plant according to the instructions given them?

A. They remained for a short while after 7:30. They weren't out right at 7:30. Mr. Martinsen made his report to Mr. Bodine that he was going out with the rest of us boys and asked him what disposition to make of the kiln; and I think—my understanding was that Mr. Bodine——

Mr. Howlett: Just a minute. We object to it as being hearsay. I think that can be established by other witnesses.

The Witness: Well, they remained in the plant and followed instructions.

(Testimony of William G. Ashworth.)

Q. (By Mr. Mauritsen) You know that they stayed in the plant? A. Yes.

Trial Examiner Stephenson: All of the witness' answer, with the exception that he knew that they stayed in the plant, will be stricken.

And may I caution the witness to listen to the question propounded and try to answer the question that is propounded, and not make any explanation unless it is called for.

The Witness: Yes, sir.

Q. (By Mr. Mauritsen) Now, upon what date was the strike called off?

A. June 25th, 1937.

Q. Were you on the picket line during the duration of the [200] strike?

A. Off and on. Not continuously the whole length of the strike, but off and on. I was there, I should say, about 16 hours a day practically every day.

Q. Did you ever see Mr. Bodine while you were on the picket line?

A. I saw him go in and out of the plant while I was on the picket line, and one day myself and two other men, Mark Damron and Glen Stewart went into the office and I asked Mr. Bodine for a letter of recommendation, which he authorized the timekeeper to write out, and he signed it for me.

Q. This was while the strike was in progress?

A. This was while the strike was in progress. It was on Saturday, June 19.



(Testimony of William G. Ashworth.)

Q. So that Mr. Bodine had opportunity to see that you were on the picket line?

A. He had seen me, or should have seen me several times on the picket line.

Q. Did you see any of the other foremen while you were on the picket line?

A. I saw them as they went in and out of the plant, yes, sir.

Q. So that they had opportunity to see you on the picket line?      A. Yes, sir. [201]

Q. After the strike was called off, did you ever apply for employment with the Respondent?

A. On the afternoon of the 25th, the day the strike was called off, I went in with several of the boys. We decided that it would be favorable to go in in a group of at least two or three, and we went in and asked him for re-employment.

Mr. Bodine told me that I knew they had been re-hiring men all week, and I hadn't come in and asked for re-employment and he had instructions from the old man—by the old man he meant Mr. Larson, the general manager—to increase the personnel up to about 90 men, which he had done, and he didn't need any more at that time. In fact, he went on to say, "I think it would be favorable for you boys to forget the Los Angeles Brick Company."

Q. In your opinion, what did he mean by that?

(Testimony of William G. Ashworth.)

Mr. Howlett: Just a minute. I object to it as a conclusion of the witness.

Trial Examiner Stephenson: Well, I am going to let him state what he understood by that reply.

A. My understanding of it was because of the fact that we had affiliated ourselves with the union and had been on the picket line that it would be useless for us to attempt to get employment at the Los Angeles Brick Company any more.

Q. Did you ever apply for work after that time?

A. No. I thought that was positive enough, and I didn't [202] return.

Q. I show you Board's Exhibit 4. Will you tell the Examiner whether your name is attached to the list which is attached to that letter?

A. My name is the 8th one, I believe, on the list. That application—what I understood by your other question——

Trial Examiner Stephenson: He asked you just one question. Is your name attached to Board's Exhibit 4?

The Witness: It is.

Trial Examiner Stephenson: And the answer is "yes."

The Witness: Yes.

Q. (By Mr. Mauritsen) Did you ever talk with any of the members of the union who had returned to work, after the strike was called off?

A. Yes, sir.

(Testimony of William G. Ashworth.)

Q. To whom or with whom did you talk?

A. On or about the——

Trial Examiner Stephenson: Will you read the question to him?

(The question referred to was read by the reporter as set forth above.)

A. I talked with several; Mark Damron for one.

Q. On or about what time or date did you talk with Mr. Damron?

A. It was about the 18th—17th or 18th of July. [203]

Q. Was anyone else present at that time?

A. Glen Stewart was present.

Q. What did Mr. Damron say to you at that time?

A. He told Glen Stewart and I that the reason he had not attended the meetings of the union was because of the fact that when he returned to work, that he had positive instructions that any time he was caught attending or having anything to do with the union, he would lose his job. [204]

Q. Did Mr. Damron say who gave him those instructions.

A. Mr. Bodine.

Q. Is he the plant superintendent?

A. The plant superintendent.

Mr. Mauritsen: You may inquire.

#### Cross Examination

Q. (By Mr. Howlett) The first meeting you attended of the union was on June 1st, you testified?

(Testimony of William G. Ashworth.)

A. Yes.

Q. And how many were there at that meeting?

A. Well, approximately 70, I would say.

Q. About 70? A. Yes.

Q. What time did the meeting start?

A. I believe it was 8:00 o'clock.

Q. 8:00 o'clock?

A. 8:00 p.m. It may have been 7:30. 7:30 or 8:00 o'clock. I wouldn't be positive.

Q. Was Mr. McNutt there? A. Yes, sir.

Q. Who had charge of the meeting?

A. Walter J. Greene, the organizer sent out by the Southern California Clay Products.

Q. Did you participate in the meeting other than being present? [205]

A. Nothing except the signing of an application card at the close of the meeting. [206]

Q. All right. Going over to the June 9th meeting, now. What did you discuss at that meeting?

A. We discussed what would be best to ask the company, and there were several different propositions proposed, but the one that was finally agreed on—the company had posted a [209] notice on the clock to the effect that—some time on June 2nd they posted that notice that there were going to be some lay-offs due to business recession and lack of orders on hand, and that those that were laid off would be eligible for re-employment. So one of them—I think the first article that we had in our agree-



(Testimony of William G. Ashworth.)

ment was union recognition, and I think the next one was in regard to re-employment of those that had been discharged; if it was a case that it was because of lack of orders and business depression, then to re-hire those men and divide up the work amongst all the employees on a pro rata basis so no one family or one man would stand the brunt of the depression.

Q. Was it your objection to have this work distributed regardless of the number of hours that each man might receive?

A. Well, we felt that it would be more fair to the employees as a whole to divide up the work, rather than to lay off part of the men and let them stand the brunt of the depression and keep on some others.

Q. You mean, even though it might be only a few hours a day?

A. Well, we felt that we were sure of the fact that there was no business depression.

Q. You were satisfied in your own mind that there was no business depression; that this statement made by them was untrue; is that correct? [210]

A. That was our impression.

Q. And you were also satisfied in your own mind that you had been fired because you were in the union?

A. That was our opinion.

(Testimony of William G. Ashworth.)

Q. And you base your opinion on the matter of there being no business there, or from what facts?

A. Well, we had been rushed for kilns to set the new material right up until the very last day of the last week in May. The last working day in May, the 29th of May, on Saturday our crew of nine men worked overtime to finish drawing a kiln so that they would have it to set Monday morning, because of the rush of orders for material; and while the material had been moving out all the previous month, except probably the last week—there was always in every month, the last week of the month usually was a slack period for the month, just like in other businesses, as they didn't buy the last few days of the month because of the fact that they didn't want that to go on that month's bill.

Q. That is your opinion?

A. Well, I base that opinion upon the fact that it happened that way practically every month.

Q. It might have happened for some other reason that you wouldn't know about, of course?

A. Well, it is possible I wouldn't.

Q. What was your position with the company? [211]

A. I worked in the kiln drawing crew and helped load trucks. I was what they call a crew leader on our crew while I was in the sewer pipe drawing crew and while I was in the tile crew.

(Testimony of William G. Ashworth.)

Q. Do you know anything about the orders taken and received by the company?

A. All I know about the orders is that it was the duty of the yard crew to do most of the loading of trucks and box cars.

Q. I am speaking now of contracts. If, in other words, the company made a contract for some special work, you wouldn't know anything about it, would you?

A. Not until the order came out and was filled.

Q. And you wouldn't know when that order was to be delivered or anything about the specifications, except when they told you to put out so much?

A. We would know about it when there was a special order; we always knew about it if it was specially made stuff, because we knew when special material was being made and, of course, as far as when it was to be delivered, I didn't know anything about that except by hearsay.

Q. You had no access to the records of the office?

A. No.

Q. And you had no access to the sales division to know what the orders were or how many had been taken the previous week [212] or previous month, or who they went to, until they told you to make up some tile?

A. It usually leaked out, usually through the foreman. He would tell us how many orders he had

(Testimony of William G. Ashworth.)

on hand and how business was going. He would say, "We have got so many orders," usually because of the fact that he was trying to speed us up and get a kiln ready to be set for more material.

Q. In other words, your information came from a leak-out source of some type? A. Yes.

Q. How long have you been in the brick business?

A. That is the only brick yard I have worked in.

Q. And how long did you work there, in months?

A. About 21 months, I guess it would figure out.

Q. 21 months. And all that time you were working in various places out in the yard, and not in the office?

A. No, I didn't work in the office. [213]

Q. Getting back to your lunch again. You were eating lunch together, were you? A. Yes, sir.

Q. Who was there with you; you say Mr. Gantz?

A. Mr. Gantz and Cornell Lyle at the start.

Q. Then Lyle left? A. Then Lyle left.

Q. Then the two of you were there together?

A. Yes, sir. [234]

Q. Who opened the conversation on the subject?

A. Well, I can't say as to that.

Q. Had Mr. Gantz always been friendly with you? A. Yes.

Q. You were eating lunch together. Was that a common custom?



(Testimony of William G. Ashworth.)

A. Mr. Gantz and Mr. Lyle and Jack Osborne and John Hall and myself all rode back and forth to work together.

Q. Whose car did you ride in?

A. One week it would be my car, and one week it would be Mr. Gantz'; and after Mr. Hall went to work—Mr. Hall hadn't been working there only a couple of weeks or so when the union started.

Q. How long had you been doing that?

A. Ever since Mr. Gantz had been there; and before he came there, Cornell Lyle and myself had been driving that way?

Q. Then I assume you got well acquainted over that period of time riding back and forth together?

A. Yes.

Q. And knew each other by your first names?

A. Yes, sir.

Q. Did you ever see each other outside of work? Did you go to each other's houses?

A. No, we didn't go to each other's houses, but we saw each other other than when working; sometimes at the ball game, [235] and sometimes on the street.

Q. So you had a friendly relation existing between the group that you speak of? A. Yes.

Q. About this conversation on this particular day, what were the substantial words he said to you?

A. I couldn't give you his exact words, but it was to this effect; that we were foolish by being

(Testimony of William G. Ashworth.)

led by a man like Mr. Greene, and we should, instead of affiliating with an outside organization, form a union of our own, of employees, just of the Los Angeles Brick Company, and depend on our own efforts, with no outside help, to gain our ends. [236]

Q. (By Mr. Howlett) On June 11, at the time of the strike [242] you said that the whole plant went out with the exception of five or six men?

A. Yes, sir.

Q. That is correct?

A. Well, when I said it went out, I meant that they didn't go in. You have got to be in to go out.

Q. All right. We are not talking about different things, but we are expressing it differently.

So on June 11th no one went in with the exception of five or six?      A. Right.

Q. Why didn't they go in? Was there a strike in progress at that time?

A. The strike was called for 7:30 a. m., June 11, 1937, and quite a little before 7:30 we had a picket line at each one of the entrances or approaches to the plant and stopped them coming to work that didn't already belong to the union and know of it, and request them not to go in because of the fact that we were on strike.

Q. And with the exception of two or three men who you have said were permitted to go in to keep the burners going, all the rest of them stayed out?

(Testimony of William G. Ashworth.)

A. They weren't permitted to go in. They were already in on duty.

Q. Again we are talking about the same thing in a different [243] way.

All right. And from that time for some time you were on the picket line?

A. Most of the time. Not all the time. I was home asleep a little of the time.

Q. About 16 hours a day, you testified?

A. I think it would be pretty close to that, on or near the picket line.

Q. Did you ask Mr. Bodine for a letter of recommendation?

A. Yes, sir.

Q. And you got it?

A. Yes, sir.

Q. You have heard several witnesses testify that they asked Mr. Bodine for letters of recommendation, did you not?

A. I have not. I have only been here this morning and I am the only witness that has testified.

Q. What conversation was held between you and the other people, if any, relative to securing letters of recommendation from the company?

A. I don't know that I ever talked of it except just before I went in, and I told the boys, "I think I will go in and ask Mr. Bodine for a letter of recommendation."

I asked the officer that was on duty there if I would be permitted to go in and he said, "Yes."

(Testimony of William G. Ashworth.)

Q. What was your purpose of getting a letter of recommenda- [244] tion?

A. What is any man's purpose for getting a letter of recommendation?

Mr. Howlett: I move it be stricken.

Trial Examiner Stephenson: The answer may be stricken.

Answer the question.

A. To help to gain a job at another place where I might apply for a job.

Q. Have you used that letter of recommendation so far?

A. No. I have never been requested to show it.

Q. With your state of mind as to your feeling toward the company, was there any question in your mind about getting that letter of recommendation?

A. No. I thought I had always done my work like it should be done. I couldn't see any reason why I shouldn't receive one.

Q. Did you have any other purpose of securing a letter of recommendation, or attempting to secure one, other than for the purpose you have already stated?

A. No, sir.

Q. On June 25th you applied for reinstatement?

A. Yes, sir.

Q. And you stated that you went in groups of two. Did you have some conversation?

A. Two or more? Two or three or more. [245]

Q. What was the purpose of that?



(Testimony of William G. Ashworth.)

Mr. Mauritsen: I object to that.

A. We wished to have witnesses.

Trial Examiner Stephenson: Just a moment. There has been an objection interposed.

The Witness: I didn't understand.

Trial Examiner Stephenson: Will you read the question?

(The desired question was read by the reporter as set forth above.)

Trial Examiner Stephenson: You may answer it if you know.

A. We wished to have a witness to the fact of the refusal, if we received a refusal of being rehired.

Q. Well, you didn't answer the question why you went in groups of two.

A. Wasn't my answer an answer to that?

Mr. Howlett: Will you read the question?

(The desired question was read by the reporter as set forth above.)

Q. In other words, you wanted to be able to prove that you had been there and you had been refused?      A. Yes, sir.

Q. You had reason to believe that your word might be doubted if you so stated?

A. Well, we had reason to believe that if it ever came to a case of a hearing before the Labor Relations Board, that we [246] might be required to have proof.

(Testimony of William G. Ashworth.)

Q. So that you went in there in groups so that you could prove it by some other witness?

A. Certainly. [247]

A. I can't be positive of the exact date, but I know it was about that time, because Mark Damron told me the night before, when I told him of the meeting—the evening before, when I told him of the meeting, he was out of gasoline and I pushed his car up to the service station——

Q. That was in July?

A. Yes. And the reason why I know is because he said, "This is my first full check since I went back to work."

Q. What conversation did you have with him at that time?

A. I asked him that evening when I pushed his card—I asked him to come to the meeting; and the next day he told Glen and I the reason why he didn't attend the meeting was because—I couldn't be positive of his exact words, but the gist of it was, "Fellows, if I would go down and take part in any meeting, it would mean my job, because that was one thing we received strict orders from Bodine when I received my job back was not to have anything to do with the union."

Mr. Mauritsen: And these were union meetings?

The Witness: And these were union meetings.

Q. (By Mr. Howlett) Where was the meeting held?

A. At Corona; at Twin Springs.

(Testimony of William G. Ashworth.)

Q. Who was present at that meeting beside those you have already named? How many people were present?

A. Some *were* around 14 or 15; I can't remember the exact [248] number. There has been too many meetings to remember the exact number present at any one meeting.

If it is permissible I would like to make a statement regarding the attendance of that meeting.

Trial Examiner Stephenson: If there is no objection go ahead and make the statement.

Mr. Howlett: I can't object before I know what it is.

Trial Examiner Stephenson: You make your statement, then if anybody moves to strike it, we will rule on it then.

A. The reason there wasn't more there was because of the fact, that just as Mark had told us—there was several of the boys that we had asked up there personally, and they told us afterwards they really were afraid to come. One Mexican boy said, "I am afraid to even be seen talking to you boys on the street or on the road."

Mr. Howlett: I move to strike it on the ground that it is hearsay testimony; the parties not named, and no chance of cross examination; no proper foundation laid.

Mr. Mauritsen: I think the Board can weigh the evidence.

(Testimony of William G. Ashworth.)

Trial Examiner Stephenson: I will allow the statement to stand; then if you want to probe into it, Mr. Howlett, to find out who made the statements to him, you may do so. [249]

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WILLIAM G. ASHWORTH

a witness recalled for further cross examination, further testified as follows:

Recross Examination (Continued) [261]

Q. Mr. Ashworth, how long had you acted as crew leader before you received your increase in pay?

A. Possibly a year. I was in the sewer pipe drawing crew for several months and I had the same standing there that I had in the tile roofing crew.

Q. Were you a crew leader in the tile roofing crew?

A. At the time of my discharge and for several months previous. All the time I was in the tile roof crew at the last.

Q. When were you appointed or when did you act as crew leader first? Was it March 1st, on or about March 1st, or was it prior to that time? Just approximately?

A. I think it was before March 1st. I don't remember just exactly when I went back over to the tile roof crew from the sewer pipe drawing crew.



(Testimony of William G. Ashworth.)

Q. But it was three or four or several months before June 1st?

A. It was several months. [263]

Q. Did you receive more money than the other men in the crew?      A. No, sir.

Q. At no time?      A. No time until June 1st.

Q. And at that time you received a 5 cent raise instead of a 2½ cent raise?

A. Yes, sir. [264]

Q. (By Mr. Mauritsen) Mr. Ashworth, if the Board should order your reinstatement with back pay, would you accept reinstatement with respondent company?      A. Yes. [270]

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### LAWRENCE H. GERMAN

called as a witness by and on behalf of the Labor Board, having been first duly sworn, was examined and testified as follows:

Trial Examiner Stephenson: State your name.

The Witness: Lawrence H. German.

Trial Examiner Stephenson: Take the stand, Mr. German.

### Direct Examination

Q. (By Mr. Mauritsen) Mr. German, have you ever worked for the respondent company?

A. Yes, sir.

(Testimony of Lawrence H. German.)

Q. When did you first start to work for Respondent? [274]

A. About January the 27th.

Q. What year? A. 1937.

Q. 1937? A. Yes, sir.

Q. What was the nature of your work while you were employed by Respondent?

A. Well, for the last 18 weeks I worked in the shop as a mechanic and general maintenance.

Q. What did you do prior to that time?

A. Well, I was just on general work around the tunnel kiln building.

Q. For the last 18 weeks, approximately, you worked as mechanic and general maintenance man?

A. Yes, sir.

Q. What was your wage rate when you first started to work for the company?

A. 45 cents an hour.

Q. Did you receive any increase in pay while you were working for the company?

A. Yes. I think it was about 80 days, I think it was, after I started, I got a 5 cent raise.

Q. At that time you received 50 cents an hour?

A. Yes.

Q. Did you receive any additional raise while you were [275] working?

A. A 2½ cent raise the last week.

Q. The general raise on June 1st?

A. Yes.

Q. Are you a member of the union?

A. Yes, sir.

(Testimony of Lawrence H. German.)

Q. When did you join the union?

A. June 1st.

Trial Examiner Stephenson: This year?

The Witness: Yes, 1937.

Q. (By Mr. Mauritsen) 1937? A. Yes.

Q. You signed an application for membership at the first meeting that the union held on June 1st, 1937? A. Yes, sir.

Q. Did you attend any further meetings of the union? A. Yes, sir.

Q. Did you attend the meeting on June 5th, 1937? A. Yes.

Q. Did you participate in the election of officers for the union? A. Just in a vote.

Q. Did you attend the meeting on June, 1937?

A. Yes, sir.

Q. When were you laid off by respondent company? [276]

A. I think it was June 9. I couldn't be positive.

Q. And who laid you off at that time?

A. Well, I just got a notice in my card.

Trial Examiner Stephenson: I didn't catch the answer.

The Witness: Just a notice on the time card, is all.

Q. (By Mr. Mauritsen) Did you see Mr. Bodine, and the other foremen whose names have been mentioned, at this first meeting on June 1, 1937?

A. Yes, sir.

Q. Were you on the picket line during the strike? A. Yes.

(Testimony of Lawrence H. German.)

Q. Did you see Mr. Bodine, and the other foremen whose names have been mentioned, going into the plant and from the plant during the time the strike was in progress?      A. Yes, sir.

Q. Did you ever apply for reinstatement to the company?      A. Yes.

Q. What was the first occasion upon which you applied for reinstatement?

A. Well, I think it was about two weeks after the strike was over. I couldn't say what day it was.

Q. Well, that would be approximately the 10th of July, 1937, would it not?

A. Well, no. It was—I think it was before the 4th of [277] July.

Q. Would you say it was about the 1st of July?

A. I would say it was the last part of June.

Q. And to whom did you apply at that time?

A. Mr. Bodine.

Q. And did he say—what did he say when you applied for work?

A. He said he didn't have anything for me to do.

Q. Did he say anything about the union at that time?      A. No.

Q. Did you apply for work after that first application?      A. Yes, sir.

Q. Do you recall on what occasion?

A. I think it was around the last part of October; somewhere along about the 20th.

Q. To whom did you apply at that time?



(Testimony of Lawrence H. German.)

A. Mr. Bodine.

Q. Were you successful in obtaining employment with Respondent at that time?

A. No, sir.

Q. Did Mr. Bodine give any reason for not employing you?

A. Lack of business is what he said. [278]

Q. Do you know if any of the men who replaced you in the shop were new men who had not been employed by Respondent as long as you were?

A. Yes.

Q. Who replaced you on the shop crew?

A. Well, I couldn't say exactly who replaced me.

Q. Who were the new men, who hadn't worked at the plant as long as you, who were on the crew?

A. John Hall and Mr. Baer.

Q. Is that the Mr. Baer who is—— [279]

Mr. Howlett: Just a minute. I don't understand the question.

Trial Examiner Stephenson: Will you read the question and answer?

(The desired question and answer were read by the reporter as set forth above.)

Mr. Howlett: All right.

Q. (By Mr. Mauritsen) This Mr. Baer, is that the same Mr. Baer who has been previously identified as assistant superintendent? A. No.

Q. It is some other Baer? A. Yes.

Mr. Mauritsen: That is all. You may cross examine.

(Testimony of Lawrence H. German.)

Cross Examination

Q. (By Mr. Howlett) Mr. German, do you know definitely that your position has been filled?

A. Yes, sir.

Q. You do know that? A. Yes.

Q. Who is the man holding it?

A. Well, I probably couldn't say who exactly has my position. He got on the shop crew after I left.

Q. What part of the shop crew were you on?

A. General maintenance. [280]

Q. How many men were there on that crew?

A. Five, I think.

Q. So you have no way of telling whether they took your job or somebody else's job, have you.

A. I was the only one laid off.

Q. You were the only one laid off in that department?

A. There were two of us laid off and two put on.

Q. When were they put on?

A. One was put on a couple of weeks before the strike, and the other one has been put on since.

Q. And what have you been doing since the time you left?

A. I worked as a carpenter for a couple of weeks, then I didn't have a job. Now I am working as a mechanic.

Q. Did you ever work at the Corona Auto Wrecking Company? A. Yes, sir.

(Testimony of Lawrence H. German.)

Q. When was that?

A. I worked there two weeks in July, and then I worked there, I think it was three weeks—three or four weeks this fall.

Q. Now, are there any other places that you worked?

A. No; I went back home.

Q. Where is that? A. North Dakota.

Q. North Dakota? A. Yes, sir. [281]

#### Redirect Examination

Q. (By Mr. Mauritsen) Mr. German, if the Board should order your reinstatement with back pay would you be willing to accept reinstatement with the company? A. Yes, sir.

Mr. Mauritsen: That is all.

Trial Examiner Stephenson: Any questions, Mr. Gately?

#### Cross Examination

Q. (By Mr. Gately) When did your employment terminate at the company?

A. I think it was June 9th.

Q. That you were laid off? A. Yes. [282]

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#### CHESTER W. LUCAS

called as a witness by and on behalf of the Labor Board, having been first duly sworn, was examined and testified as follows:

(Testimony of Chester W. Lucas.)

Trial Examiner Stephenson: State your name.

The Witness: Chester W. Lucas.

Direct Examination

Q. (By Mr. Mauritsen) Mr. Lucas, have you ever worked for respondent company?

A. Yes, sir.

Q. When did you first start to work for the company?

A. Well, it was right around the first of July, I think, in 1935.

Q. In 1935?

A. Yes. I wouldn't be positive as to the date, but right close to that.

Q. What position did you occupy while you were with the respondent company?

A. Mechanic on maintenance crew. [283]

Q. Did you work with Lawrence German, who just testified.

A. Yes, sir.

Q. You were in the same crew?

A. Yes, sir.

Q. At what wage rate were you paid when you first started to work for the company?

A. 45 cents an hour.

Q. Did you receive any increase while you were working for the company?

A. Yes; about three, I think. Two or three, not including the 2½ cent raise on June 1st.



(Testimony of Chester W. Lucas.)

Q. At what rate were you being paid when you were last employed by them? A. 62½.

Q. Did that include the last general raise on June 1st? A. Yes, sir.

Q. While you were employed by Respondent did you have an opportunity to observe the working conditions in the plant at all?

A. Well, to a certain extent. I was around repairing the different places around the plant.

Q. Were you in the plant every day; that is, practically every working day?

A. Well, practically so. Some days we would be in the shop all day and other days we would be out around the plant. [284]

Q. In this general maintenance work, is that to maintain the machinery around the plant? Is that is what is meant by that term? A. Yes. [285]

Trial Examiner Stephenson: All right. You may answer that question. A. Yes, sir.

Q. (By Mr. Mauritsen) Did you hear him testify as to these faulty gin poles? A. Yes, sir.

Q. Was his testimony in that regard true, to your knowledge?

A. Well, I know they were in poor condition because we had to work on them when they were brought into the shop, but as to their actual working condition, I couldn't say.

Q. Was it necessary to bring these gin poles in frequently for repair?

(Testimony of Chester W. Lucas.)

A. Well, quite often, yes, sir.

Q. Are you a member of the union?

A. Yes, sir.

Q. Did you attend the meeting held on June 1st, 1937?      A. Yes, sir.

Q. Did you apply for membership at that time?

A. Yes, sir.

Q. Were you sworn in as a member of the union at that time?      A. Yes, sir.

Q. Did you attend the meeting on June 5, 1937?

A. Yes, sir.

Q. Did you participate in the election of the officers?      A. Yes, sir. [286]

Q. Did you attend the meeting of June 9, 1937?

A. Yes, sir.

Q. Did you participate in the drafting of the petition to the company?      A. Yes.

Q. Was that petition, containing your requests, considered by the union?

A. Well, it was. It was drafted and redrafted several times. Different ones suggested different things.

Q. That is, different ones of the members at the meeting?

A. Yes, sir. And as each one was brought up it was discussed, and it was changed several times before it was finally completed.

Q. Was there a vote upon the adoption of the petition?      A. Yes, sir.

(Testimony of Chester W. Lucas.)

Q. What was the announced result of that vote?

A. The vote was unanimous for adoption of it.

Q. Was there a vote taken upon the union calling a strike in the event no favorable action was received?

A. Yes, sir.

Q. And what was the announced result of that?

A. There was a unanimous ballot for it.

Q. Now, Mr. Lucas, were you a member of the committee which presented this petition to Mr. Bodine?

A. Yes, sir. [287]

Q. At what time in the morning was the petition presented to Mr. Bodine?

A. Well, I couldn't tell the exact minute, but between a quarter after seven and seven-thirty.

Q. In the morning? A. Yes, sir.

Trial Examiner Stephenson: Of what date?

The Witness: The morning of the 10th.

Trial Examiner Stephenson: June 10th?

The Witness: Yes, sir.

Trial Examiner Stephenson: 1937?

The Witness: 1937, yes, sir.

Q. (By Mr. Mauritsen) What did Mr. Bodine say when you gave him the petition?

A. Well, he just simply sat down and read it over and after he had read the petition he said he would see Mr. Larson and talk it over with him; that he couldn't give us any answer or say-so on his own responsibility.

Q. Did you see Mr. Larson at the plant that day?

(Testimony of Chester W. Lucas.)

A. Yes, sir.

Q. Did you ever discuss the petition with Mr. Bodine after that time?

A. That same evening, about a quarter to four I should say.

Q. What did Mr. Bodine say to you?

Mr. Howlett: Just a minute. I am going to object to [298] that unless there is more foundation laid as to the time, place and parties present.

Trial Examiner Stephenson: Yes. Fix the time.

Q. (By Mr. Mauritsen) You testified, Mr. Lucas, that Mr. Bodine talked with you further about a quarter to four, is that right? A. Yes, sir.

Q. Who were present at that time?

A. Well, in the shop there was at least three of us there; Peterson, a foreman; Mr. Sternberg, and myself.

Q. Did these other two gentlemen take part in the discussion? A. No, sir.

Q. Did they overhear what Mr. Bodine said?

A. No. They couldn't, because he called me over to one side of the shop, and with the machinery running it would be impossible to hear, I think, over four or five feet.

Q. What did Mr. Bodine say to you at that time?

A. He simply said they wouldn't take any action on the petition, that it didn't have any backing and they couldn't do anything about it; that they wouldn't have anything to do with it; that we didn't



(Testimony of Chester W. Lucas.)

have anything to back us up in our complaint on it—in our demands, and they would ignore it.

Q. When this petition was presented to Mr. Bodine in the morning, who were the others of the committee who presented [299] this petition to Mr. Bodine?

A. Glen Stewart, Louis Juarez, and myself.

Q. Which one of you handed the petition to Mr. Bodine?           A. I did.

Q. Now, you were present also at a meeting held June 9, 1937?           A. Yes, sir.

Q. Were any instructions given to the burners of the various kilns at that meeting in the event you went out on strike?           A. Yes, sir.

Q. What were these instructions?

A. Well, they were instructed not to leave until someone either relieved them or until they were in a condition that they could shut them off—shut off the fires.

Q. Did a strike occur at the Alberhill plant of Respondent on June 11, 1937?           A. Yes, sir.

Q. How many men worked in the plant on that day while the strike was in progress?

A. Well, it would be hard to say, but I think about six.

Q. Did that include the two burners who had been requested to stay?

A. No, sir. They came out.

(Testimony of Chester W. Lucas.)

Q. Do you know who the men were who stayed in the plant?

A. Well, I know who—let's see. I know positive four. [300]

Q. Would you name those four?

A. There was John Hall, Jack Osborne, Tommy Osborne, Bud Smith; and I know another one, but I can't recall his name.

Q. Did the foremen, Mr. Bodine, Mr. Baer, Mr. Mills and Mr. Gantz go out on strike?

A. No, sir.

Q. Were you on the picket line during the progress of the strike?      A. Yes, sir.

Q. Did you see these foremen whom I have named going to and from the plant during that time?      A. Almost every day, I think.

Q. Did you ever speak with them?

A. Yes, sir; as they would go in and out, we would speak, "Good morning," or "Good evening," as they went home in the evening.

Q. I show you Board's Exhibit 3.

A. Yes, sir.

Q. Were you present at the meeting of the union at which the sending of that letter was discussed?

A. Yes, sir.

Q. Did you have an opportunity to express whether or not you desired to send that letter?

A. There was quite a bit of discussion on it; some of it added to it and some didn't. [301]

(Testimony of Chester W. Lucas.)

Q. Did you acquiesce in the sending of that letter?  
A. Yes, sir.

Q. I show you Board's Exhibit 4. Were you present at the meeting of the union at which the sending of that letter was discussed?

A. Yes, sir.

Q. Did you have an opportunity to express your opinion in regard to the sending of the letter?

A. Yes, sir. We all did. Anyone could express an opinion that cared to.

Q. Is your name on that letter, Mr. Lucas.

A. Yes, sir.

Q. Did you ever apply for reinstatement with Respondent after the strike had been called off?

A. Yes, sir.

Q. On what date did you first apply for re-employment?  
A. On June 25th, I believe.

Q. On June 25th, 1937?  
A. Yes, sir.

Q. To whom did you apply at that time?

A. Mr. Bodine.

Q. What did he say at that time?

A. That he didn't have anything for us.

Q. Did you ever apply after that time?

A. Yes, sir; twice after that. [302]

Q. Were you ever successful in obtaining employment with the company?

A. No. The second time I was over there, he said they were going to cut down the shop force, and the third time I was over there, he said they

(Testimony of Chester W. Lucas.)

were going to send the work back into Los Angeles to have it done.

Q. Mr. Lucas, in the event that the Board should order your reinstatement with back pay, would you be willing to accept employment with respondent company?

A. I don't know. It would all depend upon conditions.

Mr. Mauritsen: You may inquire.

Cross Examination

Q. (By Mr. Howlett) You left of your own accord, did you not? A. No, sir.

Q. Did you go on strike? A. Yes, sir.

Q. I mean, you were not discharged.

A. No, sir.

Q. You have been working as a truck driver for some time since then, have you not?

A. Since September the 20th.

Q. At the beach? A. Yes, sir. [303]

Q. (By Mr. Howlett) At the meeting of June 9, there were how many present at that meeting, in your estimation?

A. Well, it would be pretty hard to say. The room was full there. There was quite a bunch there. There must have been anyhow 75 or 80, or more than that.

Q. Then at the next meeting how many men were present?



(Testimony of Chester W. Lucas.)

A. At the next meeting there was practically all of them there.

Q. Practically all?

A. They wasn't all inside, because the building wasn't big enough to accommodate them all at once. Some of them were on the outside.

Q. You saw Mr. Larson at the plant on June 10, 1937, did you?      A. Yes, sir.

Q. That was later in the day after you had been to see Mr. Bodine in the morning?

A. No. He was through the shop on and off, at different times. [305]

Q. But he wasn't there the first time you went to see Mr. Bodine? At least, you did not see him?

A. No.

Q. The men that were left there to take care of the kilns that were in operation, do you know how long they stayed there, of your own knowledge?

A. One of them came out about 20 minutes to 8, and the other one about, I should say, 9:00 o'clock.

Q. Morning or afternoon?

A. In the morning.

Q. That is of June 11th?

A. June 11th, yes, sir.

Q. Do you know who took their places at that time?

A. Jack Baer took charge of the tunnel kiln. Art Hannum was the burner on the tunnel kiln, and

(Testimony of Chester W. Lucas.)

Jack Baer took that; and Mr. Bodine, I think, looked after the other kiln. [306]

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### ARNOLD MOSS

called as a witness by and on behalf of the Labor Board, having been first duly sworn, was examined and testified as follows:

Trial Examiner Stephenson: State your name.

The Witness: Arnold Moss.

Trial Examiner Stephenson: Take the stand.

[307]

#### Direct Examination

Q. (By Mr. Mauritsen) Mr. Moss, have you ever been employed by respondent company?

A. Yes, sir.

Q. When were you first employed by the company?      A. April 13.

Q. 1937?      A. 1937.

Q. What were your duties when you first began to work for the Respondent?

A. When I first started I started first with a pick and shovel leveling up ground to place new machinery—or machinery. I don't know whether it was new or not.

Q. Did you do that work all the time while you were employed by the company?      A. No.

Q. What did your duties consist of after that?

(Testimony of Arnold Moss.)

A. Well, I loaded trucks, worked handling brick some, unloading kilns, helped put floors in one kiln or two.

Q. Did you receive any increase in pay while you were working for Respondent?

A. Only one.

Q. Only one?

A. Yes; on June 1st. The general raise.

Q. The general raise on June 1st? [308]

A. Yes.

Q. When did your employment with the Respondent terminate? When did it end?

A. June 3rd.

Q. Were you laid off at that time?

A. I was laid off.

Q. Who laid you off?                      A. Jack Baer.

Q. Was he the assistant superintendent?

A. I suppose.

Q. What did he tell you at that time in regard to the lay-off?

A. Well, he told me they was cutting down the force, and I asked him if I was canned for good or what, and he said just for a month or a few weeks. He said, "We have nothing against you. You are a good worker and you will be called again." And I told him I wanted to know if I should stay around and wait for a job or get out and look elsewhere and he said, no; he couldn't keep all the men on the job and he would have to lay them off until business picked up.

(Testimony of Arnold Moss.)

Q. In other words, he told you it was a temporary lay-off?

A. Yes, sir, a temporary lay-off. I asked him and he said that.

Q. Mr. Moss, are you a member of the union?

A. Yes. [309]

Q. When did you join the union?

A. June 2nd, 1937.

Q. Where did you join the union?

A. At Ed. Hannum's house.

Q. Is that the Ed. Hannum who was later elected president of the union?      A. Yes, sir.

Q. Did you attend the meeting on June 5, 1937?

A. No.

Q. Did you attend the meeting on June 9, 1937?

A. Yes.

Q. Did you take part in the discussion in that meeting?      A. Yes.

Q. Did you consider the petition that was to be presented to the company?

A. Did I consider it?

Q. Did you consider it? Did you discuss it with the other members?      A. Yes. We discussed it.

Q. Were you on the picket line during the progress of the strike?      A. Yes.

Q. Did you see the Respondent's foremen going to and from work?      A. Yes, sir. [310]

Q. Did you ever talk with them?

A. No, sir. I never talked with them.



(Testimony of Arnold Moss.)

Q. Mr. Moss, I show you Board's Exhibit 4. Is your name attached to the list which is attached to that letter? I believe it is arranged alphabetically.

A. Yes.

Q. Since the strike has been called off, did you ever apply for reinstatement? A. Yes.

Q. To whom did you apply?

A. Mr. Bodine.

Q. What did he say at that time?

A. Well, the first time he said, "There is no use of hanging around here." There was quite a few out there.

Q. On or about what date did you first apply?

A. It was on or about the 27th or 28th.

Q. The 27th or 28th of June? A. Yes.

Q. 1937? A. Yes.

Q. Have you applied since that time?

A. Yes, sir.

Q. How many times? A. Twice.

Q. Have you ever obtained employment from the company since [311] that time?

A. No, sir.

Q. Are you a married man, Mr. Moss?

A. Yes, sir.

Q. Do you have a family? A. Yes, sir.

Q. Have you had employment since the termination of the strike? A. I have had a little.

Q. Are you now employed? A. No, sir.

Q. In the event that the Board should order your reinstatement with back pay would you be

(Testimony of Arnold Moss.)

willing to accept employment from Respondent?

A. Yes, sir. [312]

Redirect Examination

Q. (By Mr. Mauritsen) During the time you were employed by Respondent were any other people put on? A. Yes, sir.

Q. Do you know approximately how many have been employed since you were employed there?

A. The short time I was there there were seven or eight, that I know of. Of course, all the men are kind of new to me; but seven or eight that I know of. They told me.

Q. In other words, they told you that they hadn't worked there before?

A. Yes, sir; they told me that. [313]

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JAMES GRIER

called as a witness by and on behalf of the Labor Board, having been first duly sworn, was examined and testified as follows:

Trial Examiner Stephenson: State your name.

The Witness: James Grier.

Trial Examiner Stephenson: Take the stand, Mr. Grier.

Direct Examination

Q. (By Mr. Mauritsen) Have you ever been employed by respondent company?

(Testimony of James Grier.)

A. Yes, sir.

Q. When did you first start to work for the company?      A. January 10 or 11, 1934.

Q. When did your employment with the company end? [314]      A. June 10, 1937.

Q. Did you work continuously during that time for the company?

A. Yes, with the exception of one vacation—a short time; I took a couple of months off, because work wasn't very steady and I was only getting a couple of hours a day.

Q. What was the nature of your duties when you first started to work for Respondent?

A. General labor in the yard.

(Discussion off record.)

Q. Did you act as general laborer in the yard during the entire course of your work for Respondent?

A. No. I worked at labor for approximately a year—a little over, then I went to truck driver and operating power equipment in the pits.

Q. What were your duties when you were last employed by Respondent?

A. Driving the water truck and keeping up the roads.

Q. Of what crew were you a member?

A. Pit crew.

Q. And as respects length of service, how did you stand in comparison with the other members of that crew?

(Testimony of James Grier.)

A. In point of service I was second driver or operator on power equipment, with the exception of the power shovel.

Q. In other words, was there one man who had worked longer [315] in that crew than you?

A. In truck driving, and the man on the hoist was an older man than I.

Q. At the most there were two that were older?

A. Yes; two men older than I on the operating end.

Q. Do you know who was the first truck driver?

A. Yes.

Q. Who? A. John Walker.

Q. That is in point of service, he was the only man— A. The only driver ahead of me.

Q. The only driver ahead of you? A. Yes.

Q. I believe you stated that your employment was terminated June 10, 1937? A. Yes.

Q. Are you a member of the union?

A. Yes, sir.

Q. When did you join the union?

A. June 5, I believe.

Q. Were you present at the union meeting held June 1st, 1937? A. No, sir.

Q. Were you present at the meeting held June 5? A. Yes, sir. [316]

Q. Did you apply for membership at that time?

A. Yes, sir.

Q. Did you sign an application card?

A. Yes, sir.



(Testimony of James Grier.)

Q. Were you sworn in? A. Yes, sir.

Q. Who laid you off on June 10, 1937?

A. Mr. Mills, the pit foreman.

Q. Mr. Mills? A. Yes.

Q. What did he say at that time?

A. He said that for lack of orders or lack of business they would have to cut the crew down and lay the water wagon off.

Q. Mr. Grier, what wage did you first receive when you started to work for the company?

A. 37 cents an hour.

Q. And what were you receiving when your employment was terminated by Respondent?

A. 50½ cents an hour.

Q. During the last period of your employment you were engaged as truck driver?

A. Yes sir, truck driver, or I run the pumps, and almost any mechanical work in the pits, with the exception of the power shovel.

Q. With the exception of the power shovel?

[317]

A. Yes.

Q. In what condition were the trucks that you were required to drive?

A. All of them, with the exception of one of them, were in very poor shape most of the time.

Q. What do you mean by poor shape?

A. Well, they would be in the shop at least once a week, and from that to three or four times a week. Always once a week; and probably all day or two days.

(Testimony of James Grier.)

Q. Did they have good lights?

A. They didn't have any lights on them. I only drove them days.

Q. How were the brakes?

A. They didn't have any brakes on about half of them. [318]

Q. Now, Mr. Grier, were you on the picket line during the strike?      A. Yes, sir.

Q. Did you see the foremen of the respondent company as they went to and from the plant?

A. Yes, sir. [320]

Q. Did you ever speak to them?

A. Not to talk to them. Just to wave to them or something like that. We never spoke; never held a conversation with them.

Q. I hand you Board's Exhibit 4. Will you please examine that and tell the Examiner whether your name is on the list attached to the letter.

A. Yes, sir.

Q. Did you ever make other application for reinstatement?

A. Yes, sir, three different times.

Q. What was the date of the first application, do you know?      A. June 25th.

Q. Was that the day on which the strike was called off?      A. Yes, sir.

Q. To whom did you apply for reinstatement?

A. Mr. Bodine.

Q. What did he say at that time?

(Testimony of James Grier.)

A. He said that the crew; that is, the personnel would be cut to 90 instead of the former list, and they had all those number of men and there wouldn't be any places for the rest of us.

Q. Do you know whether anyone was employed subsequently who drove your truck?

A. Yes, sir.

Q. Do you know whether he had been with the company prior [321] to that time?

A. One fellow that took it right after they started again had been with the company approximately six months, but had never driven. He was a laborer before.

Q. You say he took it first. Did anybody take it subsequent to that time?

A. To my knowledge another man took it for a while, then he was put on the dump truck afterwards.

Q. Do you know who that man was? Can you give his name?

A. It is Morrell, as far as I know; a young man, I would say about twenty years old.

Q. Do you know whether he had ever worked for the company before?

A. Not to my knowledge.

Q. And approximately how long did you work for the company prior to your lay-off?

A. About three years and five months.

Q. Mr. Grier, if the Board should order your reinstatement with the payment of back pay, would

(Testimony of James Grier.)

you be willing to accept employment with the Respondent?           A. Yes, sir.

Mr. Mauritsen: You may cross examine.

Cross Examination

Q. (By Mr. Howlett) Did you go out at the time of the strike? [322]

A. No, sir. I was laid off.

Q. Laid off the same day?

A. Laid off the day before.

Q. On the 10th?

A. I was laid off the 9th, but the date on my severance slip, or social security slip is dated the 10th.

Q. So it was actually the 9th?

A. It was actually the 9th, dated the 10th. [323]

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FRANK GERMAN

called as a witness by and on behalf of the Labor Board, being first duly sworn, was examined and testified as follows:

Trial Examiner Stephenson: State your name.  
[329]

The Witness: Frank German.

Trial Examiner Stephenson: Take the stand.

Direct Examination

Q. (By Mr. Mauritsen) Have you ever been employed by the respondent company?



(Testimony of Frank German.)

A. Yes, sir.

Q. When did you first enter their employ?

A. August 21, 1936.

Q. And what was the nature of your duties when you first started to work for the company?

A. To begin with, it was general labor, drawing kilns—

Trial Examiner Stephenson: Can you speak a little louder?

A. Drawing kilns was the first job I had there.

Trial Examiner Stephenson: That is much better.

A. And general labor of all kinds.

Q. What work were you doing when you were last employed by the Respondent?

A. Driving a truck.

Q. What wage did you first receive when you were first engaged?      A. 40 cents an hour.

Q. What were you receiving when you last worked for Respondent?

A. 50½ cents an hour. [330]

Q. Was that including the last general raise on June 1st?

A. That was including the last general raise.

Q. Had you ever had any complaints concerning your work?      A. Well—

Q. I mean, unusual complaints?      A. No.  
[331]

Q. When did you join the union, Mr. German?

A. The first meeting. I am not sure what the date was. I think it was June 1st.

(Testimony of Frank German.)

Q. June 1st, 1937? A. Yes, sir.

Q. You signed an application card at that meeting?  
A. Yes, sir.

Q. Did you attend the meeting on June 5, 1937?

A. Yes, sir.

Q. Did you attend the meeting on June 9, 1937?

A. Yes, sir.

Q. Did you vote on the question of sending the petition or request to the company? A. I did.

Q. Were you in favor of sending this petition to the company? [332] A. Yes, sir.

Q. Did you go out on strike on June 11?

A. Yes, sir.

Q. Did you take part on the picket line?

A. Yes, sir.

Q. Did you see Respondent's foremen going to and from the plant? A. Yes, sir.

Q. Did you ever speak with them?

A. Well, just the day that they came out to pay them fellows that hadn't got their checks, before.

Q. In other words, on that day they saw you on the picket line? A. Yes, sir.

Q. Which one of them saw you?

A. Mr. Bodine.

Q. Did he give you a check?

A. No. The timekeeper, Bob Neblett, gave the check to me.

Q. I hand you Board's Exhibit 4 and ask that you examine it and tell the Examiner whether your name is on that list? A. Yes, sir.

(Testimony of Frank German.)

Q. Did you ever make other application for reinstatement?      A. Just once.

Q. On or about what day?

A. June 25th. [333]

Q. That was the day on which the strike was called off?      A. Yes, sir.

Q. To whom did you apply?

A. Mr. Bodine.

Q. What was his reply?

A. He said that they weren't taking on any men at that time.

Q. Do you know whether your truck has been operated by anyone else since that time?

A. Yes, sir.

Q. Do you know who has operated your truck since that time?

A. Well, a colored boy by the name of Ernest is his first name. I don't know his last name.

Q. Had this colored boy named Ernest been employed before you went with Respondent or after you went with Respondent?

A. Before I went.

Trial Examiner Stephenson: I don't think the witness understands the question.

Reframe the question.

Q. (By Mr. Mauritsen) Had the colored boy, named Ernest, worked for Respondent as long as you had worked for them, or had he worked a lesser time?      A. He had worked a lesser time.

(Testimony of Frank German.)

Q. He was junior to you, in other words, in seniority?      A. Yes, sir.

Mr. Mauritsen: You may inquire. [334]

(Discussion off the record.)

Trial Examiner Stephenson: Proceed.

Cross Examination

Q. (By Mr. Howlett) You did go out on strike on June 10?

A. On June 11, when the strike was called.

Q. You have been working since the time you left?      A. Part time.

Q. Where?

A. For Steve Ragsdal at Desert Center; and I worked for International Manufacturing Company at Elsinor.

Q. Is that all?      A. Yes, sir.

Q. You were back in Dakota part of the time, were you?      A. Yes, sir.

Q. On your father's farm?      A. Yes, sir.

Q. You worked there, did you?      A. Yes.

Mr. Howlett: That is all.

Trial Examiner Stephenson: Anything further, Mr. Mauritsen?

Mr. Mauritsen: I have another question.

Redirect Examination

Q. (By Mr. Mauritsen) Mr. German, in the event that the Board should order your reinstatement with back pay, would [335] you accept employment with Respondent?      A. Yes, sir.



## LAWRENCE McNUTT

having heretofore been sworn and testified as a witness on behalf of the Board, was recalled for further examination.

Trial Examiner Stephenson: You have already been sworn, Mr. McNutt?

The Witness: Yes, sir.

## Direct Examination

Q. (By Mr. Mauritsen) Now, Mr. McNutt, of what did your duties consist while you were engaged by Respondent?

A. Kiln drawing; tile kiln drawing and brick kiln drawing. [336]

Q. Was that in the sewer pipe kiln?

A. Brick and tile.

Q. Brick and tile?

A. Roof tile. Flue lining, too.

Q. Did it consist of drawing all those things; that is, sewer pipe kiln—

A. I only worked in about two sewer pipe kilns. The other kilns were roof tile and brick and flue lining.

Q. Did you work any amount of overtime while you were working for Respondent?

A. On any number of occasions we worked overtime.

Q. Did you work any overtime during the last one or two months prior to your lay-off?

A. Yes, sir. The last Saturday I worked three hours overtime—the last Saturday in May. And on

(Testimony of Lawrence McNutt.)

a good many occasions prior to that I worked from one to two hours overtime loading trucks. [337]

Cross Examination

Mr. Howlett: Just one question, and that is not cross examination as to this examination.

Q. (By Mr. Howlett) Are all the parties whose names appear on these cards members of the union at this time?

A. I can't swear to that. They have never come to me and told me they weren't.

Q. And you are the secretary? A. Yes, sir.

Q. You have never had any of them tell you they were not?

A. I have never had any of them tell me they were not.

Q. You consider them all members?

A. I considered them all members at the time that they signed that, with due respect to their possibly wanting to drop out at this time. [340]

Q. Up to the time of the strike did you consider them all members? A. Certainly.

Q. And how long after the strike did you consider them all members?

A. I still consider them all members. [341]

Q. (By Mr. Gately) You heard Mr. Larson make the statement that he would never have a union in this plant; he would shut down first?

A. He made that statement; absolutely.

Q. What is the condition that brought that about; that is, what brought that statement on?

(Testimony of Lawrence McNutt.)

A. I think that followed when I said that perhaps a union label would help improve sales for him.

Q. Then he made the statement?

A. I think that was right subsequent to that statement of mine.

Mr. Gately: That is all. [344]

#### Recross Examination

Q. (By Mr. Howlett) Was that in the presence of Dr. Nylander? A. Yes, sir. [345]

Q. (By Mr. Mauritsen) Mr. McNutt, I show you Board's Exhibit 4, about which you testified previously. Did the union approve the sending of that letter at any meeting?

A. A meeting was held on the picket line June 25th, in the afternoon, just before the signs were pulled down, and then I presented this for a motion to those right there, and there it was accepted.

Q. Do you recall who suggested the sending of that letter?

A. I may say that our representative in Los Angeles, Mr. Sugar, suggested it might be a good idea to do that.

Q. Was that act approved by the union officers?

A. Yes, sir.

Q. Was it approved by other members of the union? A. Yes, sir. [347]

#### Recross Examination

Q. (By Mr. Howlett) Was it approved by all the people on that list? A. No, sir.